ENROLLED ORIGINAL

AN ACT

D.C. ACT 15-637

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 30, 2004

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To amend Chapter 23 of Title 16 of the District of Columbia Official Code to create a purpose clause that would express the goals of the District in creating a juvenile justice system capable of dealing with the problem of juvenile delinquency, while treating children as children and protecting the needs of communities and victims alike; to amend Chapter 23 of Title 16 of the District of Columbia Official Code to establish a constitutional standard for adjudicating juvenile competency and a judicial procedure for committing an incompetent juvenile for treatment to attain competency; to amend Chapter 23 of Title 16 of the District of Columbia Official Code to ensure the ability of governmental agencies to share information to carry out their official duties, to amend juvenile confidentiality provisions to comport with the requirements of the Family Court Act of 2001 and the Improved Child Abuse Investigations Act of 2002, and to provide that victims and eyewitnesses to crimes committed by juveniles have the right to certain information; to amend section 16-2307 of the District of Columbia Official Code to ensure that a transfer hearing is commenced within 30 days of the filing of a motion, subject only to one continuance of no more than 30 days, and that the judicial decision regarding transfer is rendered within 30 days after the conclusion of the transfer hearing; to amend Chapter 23 of Title 16 of the District of Columbia Official Code to require that the court find by clear and convincing evidence that a juvenile who has pled or been found guilty of an offense is not in need of care or rehabilitation before the court can dismiss the matter at disposition, and to confirm that a case may not be dismissed under this subsection only on the grounds that a child is receiving care and rehabilitation in another case; to amend Chapter 23 of Title 16 of the District of Columbia Official Code to provide that victims and eyewitnesses to crimes committed by juveniles have certain rights, including HIV/AIDS testing of the juvenile, the right to be notified of and be present at certain hearings regarding the juvenile offender, the right to submit a victim impact statement, the right to restitution, the right to certain information regarding the juvenile offender, and to provide that victims and eyewitnesses be treated with dignity and respect for privacy, provided with a separate waiting area during proceedings, if practicable, be informed of financial or social services available to them, and the return of stolen property, and to ensure victim and eyewitness security by prohibiting the release of victim or eyewitness names and addresses unless otherwise required by law and by requiring a juvenile or an agent of the juvenile to properly identify himself or herself when dealing with a victim or eyewitness; to amend section 16-2320 of the District of Columbia Official Code to ensure that a child found in need of supervision is not committed to or placed in secured settings designed for delinquent youth; to amend section 16-2323 of the District of Columbia Official Code to provide that the Superior Court of the District of Columbia's Division of Social Services and the Department of Human Services' Youth Services Administration shall conduct periodic evaluations of a

committed child to determine if the services provided to the child have been effective; to amend section 16-2319 of the District of Columbia Official Code to require that when legal custody has been transferred to the Youth Services Administration pursuant to a dispositional order that the Youth Services Administration conduct an evaluation of every child taken into custody to determine the appropriate services necessary for rehabilitation of the child and to develop an individual treatment plan for the child, and to allow a child, parent of a child, or guardian of a child to petition the court to modify a disposition order based on the government's failure to provide necessary services; to amend section 16-2325.01 of the District of Columbia Official Code to require the involvement and participation of a parent, guardian, or other person with whom a child resides, in the rehabilitation process; and to require the District of Columbia to close the current Oak Hill Youth Detention Facility within 4 years and to replace it with new facilities designed according to best practices.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Omnibus Juvenile Justice Act of 2004".

TITLE I. PURPOSE CLAUSE.
Sec. 101. Short title.
This title may be cited as the "Purpose Clause Act of 2004".

Sec. 102. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding the phrase "16-2301.01. Purpose." after the phrase "16-2301. Definitions.".

(b) A new section 16-2301.01 is added to read as follows:

"§ 16-2301.01. Purpose.

"The purpose of this subchapter is to create a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will treat children as children in all phases of their involvement, while protecting the needs of communities and victims alike. In furtherance of this purpose, the following goals have been established for delinquency cases in the Family Court:

"(1) To provide due process through which juveniles and all other interested parties are assured fair hearings, during which applicable constitutional and other legal rights are recognized and enforced;

"(2) To promote youth development and prevent delinquency through early intervention, diversion, and community-based alternatives;

"(3) To preserve and strengthen families whenever possible and to remove a child from the custody of the child's parents, guardian, or other custodian only when it is determined by the appropriate authority to be in the child's best interests or when necessary for the safety and protection of the public;

"(4) To hold a child found to be delinquent accountable for his or her actions, taking into consideration the child's age, education, mental and physical condition, background, and all other relevant factors;

"(5) To place a premium on the rehabilitation of children with the goal of creating productive citizens and to recognize that rehabilitation of children is inextricably connected to the well-being and strength of their families;

"(6) To serve children in their own neighborhood and communities whenever possible;

"(7) To hold the government accountable for the provision of reasonable rehabilitative services;

"(8) To provide for the safety of the public; and

"(9) To achieve the foregoing goals in the least restrictive settings necessary, with a preference at all times for the preservation of the family and the integration of parental, guardian, or custodial accountability and participation in treatment and counseling programs.".

TITLE II. JUVENILE COMPETENCY.

Sec. 201. Short title.

This title may be cited as the "Juvenile Competency Act of 2004".

Sec. 202. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2301 is amended by adding new paragraphs (38), (39), (40), (41), and (42) to read as follows: Amend, § 16-2301

"(38) The term "incompetent to proceed" means that a child alleged to be delinquent is not competent to participate in a hearing on the petition pursuant to section 16-2316(a) or any other hearing in a delinquency proceeding, except scheduling, status, and competency hearings, because he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

"(39) The term "psychiatrist" means a physician who is licensed to practice medicine in the District of Columbia, or is employed by the federal government, and has completed a residency in psychiatry.

"(40) The term "qualified psychologist" means a person who is licensed pursuant to section 3-1205.01, and has one year of formal training within a hospital setting, or 2 years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral.

"(41)(A) The term "victim" means any person, organization, partnership, business, corporation, agency or governmental entity:

"(i) against whom a crime, delinquent act, or an attempted crime or delinquent act has been committed;

"(ii) who suffers any physical or mental injury as a result of a crime, delinquent act, or an attempted crime or delinquent act;

"(iii) who may have been exposed to the HIV/AIDS virus as a result of a crime, delinquent act, or an attempted crime or delinquent act; or

"(iv) who suffers any loss of property, including pecuniary loss, as a result of a crime, delinquent act, or an attempted crime or delinquent act.

"(B) The term "victim" shall not include any person who committed or aided or abetted in the commission of the crime, delinquent act, or attempted crime or delinquent act.

"(42) The term "immediate family member" means:

"(A) the person's parent, brother, sister, grandparent, or child, and the spouse of any such parent, brother, sister, grandparent, or child;

"(B) any person who maintains or has maintained a romantic relationship,

not necessarily including a sexual relationship, with the person; or

"(C) any person who has a child in common with the person.".

(b) Section 16-2307(c) is amended to read as follows: Amend, § 16-2307

"(c) When there are grounds to believe that the child is incompetent to proceed, the Division shall stay the proceedings for the purpose of obtaining an examination pursuant to section 24-501. If the Division determines, pursuant to section 24-501, that the child is incompetent to proceed, the Division shall not proceed to a determination under subsection (d) of this section unless it subsequently has determined that the competency of the child has been restored.".

(c) Section 16-2315 is amended as follows: Amend, § 16-2315

(1) Subsection (a) is amended as follows:

(A) Designate the existing language as paragraph (1).

(B) New paragraphs (2) and (3) are added to read as follows:

"(2) An order for examination under this subsection shall include:

"(A) A copy of the petition;

"(B) The names and addresses of the attorney for the District of Columbia and the attorney for the respondent; and

"(C) A summary of the reasons for the examination request.

"(3) The court may issue such orders as may be necessary to procure any available mental health and educational records and other information that is deemed relevant for purposes of the examination.".

(2) Subsection (b) is amended as follows:

(A) Paragraph (2) is amended by adding the words "or qualified psychologist" after the word "psychiatrist" each time it appears.

(B) Paragraph (3) is amended to read as follows:

"(3)(A) Hospitalization for an examination shall be for a period of not more than 21 days, except that the Division may grant extensions which may not exceed 21 days in the aggregate if a psychiatrist or qualified psychologist certifies that a mental health examination has not been completed and cannot be effectively provided on an outpatient basis.

"(B) If the examination is to determine whether the child is incompetent to proceed, an extension of time may not be granted unless the psychiatrist or qualified psychologist also certifies that the psychiatrist or qualified psychologist is unable to determine whether the child is incompetent to proceed and needs an additional period of time to complete the examination.".

(3) A new subsection (b-1) is added to read as follows:

"(b-1)A report of a mental health examination ordered under this section to determine whether a child is incompetent to proceed shall be made in writing and served on the court and the attorneys of record. The report shall include:

"(1) An assessment of the child's capacity to understand the proceedings against him, including the nature of the charges and range of potential options available to the court at disposition;

"(2) An assessment of the child's ability to assist his attorney; and

"(3) If the report concludes the child is incompetent to proceed:

"(A) The reasons and bases for the conclusion;

"(B) The suspected cause of the incompetence;

"(C) An assessment of the likelihood of the child attaining competence in the reasonably foreseeable future; and

"(D) If the child is assessed to be likely to attain competence in the reasonably foreseeable future:

"(i) Any recommended treatment and services that may render the child competent in the reasonably foreseeable future; and

"(ii) A certification as to the least restrictive setting for providing such treatment and services.".

(4) Subsection (c) is amended to read as follows:

"(c)(1) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to proceed under the petition and is unlikely to attain competence in the reasonably foreseeable future, it shall suspend further proceedings and the Corporation Counsel shall, where appropriate, initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21.

"(2)(A) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to proceed under the petition and is likely to attain competence in the reasonably foreseeable future, the Division shall order that the child receive such treatment on an outpatient basis, unless a psychiatrist or qualified psychologist certifies and the Division finds that inpatient hospitalization is the least restrictive setting for providing treatment and services that may render the child competent in the reasonably foreseeable future.

"(B) If the Division determines that hospitalization is not appropriate, the child may be ordered into detention or shelter care if detention or shelter care would otherwise be warranted pursuant to section 16-2310 while receiving treatment and services that may render the child competent in the reasonably foreseeable future.

"(3) If an order for inpatient hospitalization is made under paragraph (2) of this subsection, the Division may order the child sent to a hospital or mental health facility or unit designated by the Mayor as appropriate for treatment of juveniles alleged to be delinquent.

"(4) If, at any time after the child is ordered to undergo treatment under paragraph (2) of this subsection, the psychiatrist or qualified psychologist responsible for the treatment believes the child is competent, or, in the case of a child hospitalized under paragraph (3) of this subsection, determines that inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the psychiatrist or qualified psychologist shall immediately send a report to the Division and attorneys of record stating the basis for the conclusion that the child has attained competency or that inpatient hospitalization is no longer the least restrictive setting.

"(5)(A) The Division shall hold a prompt hearing upon receipt of a report under paragraph (4) of this subsection, and no more than once in a 45-day period, the Division, on motion of the child or the Corporation Counsel, may hold a hearing to determine the child's progress toward attaining competence.

"(B) At any hearing conducted pursuant to this paragraph, the Division shall determine whether continued treatment and services are supported by a finding that the child is likely to attain competence in the reasonably foreseeable future. Where the psychiatrist or qualified psychologist has reported that inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the Division shall order that any further treatment and services be rendered on an outpatient basis. In such case, the Division may order the child into detention or shelter care if detention or shelter care would otherwise be warranted pursuant to section 16-2310 while receiving continued treatment and services.

"(6) The psychiatrist or qualified psychologist responsible for the treatment of

the child shall ensure that a report is prepared and submitted to the Division and attorneys of record every 2 months, or at such shorter intervals as ordered by the court, from the date the treatment order is issued under paragraph (2) of this subsection. The report shall contain information regarding the child's progress toward attaining competency, the treatment being provided, and any recommendations regarding changes to the treatment that would be likely to aid in achieving the goal of the order. If the child is hospitalized, the report shall also include a statement indicating whether inpatient hospitalization continues to be the least restrictive setting for providing treatment and services that may render the child competent in the reasonably foreseeable future.

"(7)(A) No child ordered into a hospital, detention, or shelter care while receiving treatment and services under this section shall be so confined for more than 180 days, except the Division may order such confinement to continue for up to 180 more days if it finds that:

"(i) The child remains incompetent to proceed;

"(ii) There is a substantial probability the child will attain competence within the period of continued confinement; and

"(iii) In the case of a hospitalized child, that inpatient hospitalization continues to be the least restrictive setting for providing treatment and services that may render the child competent to proceed.

"(B) If at the end of 360 days a child so confined remains incompetent to proceed, and remains likely to attain competence in the reasonably foreseeable future, the Division shall lift the hospitalization, detention, or shelter care order and may order that the child receive on an outpatient basis such further treatment and services as may render the child competent in the reasonably foreseeable future.

"(8) If the Division at any time determines that the child receiving treatment and services under this subsection is unlikely to attain competence in the reasonably foreseeable future, the Division shall suspend further proceedings and the Corporation Counsel shall, where appropriate, initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21.

"(9) Nothing in this subsection shall prevent the Corporation Counsel from initiating commitment proceedings pursuant to Chapter 5 or 11 of Title 21 at any time.".

TITLE III. CONFIDENTIALITY OF JUVENILE RECORDS.

Sec. 301. Short title.

This title may be cited as the "Confidentiality of Juvenile Records Act of 2004".

Sec. 302. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2331 is amended as follows:

(1) Subsection (b) is amended as follows:

Amend, § 16-2331

(A) A new paragraph (3A) is added to read as follows:

"(3A) at the discretion of the Corporation Counsel, each eyewitness, victim, or the immediate family members or custodians of each eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorney, when the information relates to release status, the level of respondent's placement, stay-away orders imposed, respondent's participation in diversion or a consent decree, the offenses charged in the petition, the terms of any plea agreements, findings, or verdicts related to the adjudication of the case, or commitment or probational status, unless the release of such information is otherwise

prohibited by law or includes mental health information;".

(B) Paragraph (4) is amended to read as follows:

"(4) any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court's probation staff, and counsel for the respondent or defendant in that case;".

(C) Paragraph (6) is amended to read as follows:

"(6) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys, or defense attorneys, when necessary for the discharge of their official duties;".

(D) Paragraph (9) is amended to read as follows:

"(9) authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;".

(E) Paragraph (10) is amended by striking the period at the end and inserting a semicolon in its place.

(F) New paragraphs (11), (12), and (13) are added to read as follows:

"(11) the Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this paragraph;

"(12) the Child and Family Services Agency, for the purposes of carrying out its official duties;

"(13) any law enforcement personnel when necessary for the discharge of their official duties.".

(2) A new subsection (b-2) is added to read as follows:

"(b-2) Notwithstanding subsection (b) of this section, the Division, upon application of the Corporation Counsel and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the case record if:

"(1) The respondent has escaped from detention or from the custody of the Youth Services Administration and is likely to pose a danger or threat of bodily harm to another person;

"(2) Release of such information is necessary to protect the public safety and welfare; and

"(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).".

Amend, § 16-2332

(b) Section 16-2332(b) is amended as follows:

(1) Paragraph (6) is amended by striking the word "and" at the end.

(2) Paragraph (7) is amended by striking the period at the end and inserting the phrase "; and" in its place.

(3) New paragraphs (8), (9), and (10) are added to read as follows:

"(8) authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

"(9) the Child and Family Services Agency when necessary for the discharge of its official duties; and

"(10) law enforcement officers of the United States, the District of Columbia, and other jurisdictions when a custody order has issued for the respondent, except that such records shall be limited to photographs of the child, a physical description of the child, and any addresses where the child may be found, and the law enforcement officer may not be permitted access to any other documents or information contained in the social file.".

(c) Section 16-2333 is amended as follows:

Amend, § 16-2333

(1) Subsection (b) is amended as follows:

(A) A new paragraph (4A) is added to read as follows:

"(4A) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys when necessary for the discharge of their official duties;".

(B) Paragraph (5) is amended to read as follows:

"(5) any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court's probation staff, and counsel for the respondent or defendant in that case;".

(C) Paragraph (8) is amended by striking the word "and" at the end.

(D) Paragraph (9) is amended by striking the period at the end and inserting a semicolon in its place.

(E) New paragraphs (10), (11), and (12) are added to read as follows:

"(10) authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

"(11) the Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this paragraph; and

"(12) each eyewitness, victim, or the immediate family members or caretakers of the eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorney, when the records relate to the incident in which they were an eyewitness or a victim.".

(2) A new subsection (b-1) is added to read as follows:

"(b-1) Notwithstanding subsection (b) of this section, the Division, upon application of the Corporation Counsel and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the law enforcement records if:

"(1) The respondent has escaped from detention or from the custody of the Youth Services Administration and is likely to pose a danger or threat of bodily harm to another person;

"(2) Release of such information is necessary to protect the public safety and welfare; and

"(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).".

TITLE IV. TRANSFER OF VIOLENT JUVENILE OFFENDERS.
Sec. 401. Short title.
This title may be cited as the "Violent Juvenile Offenders Transfer Act of 2004".

Sec. 402. Section 16-2307(d) of the District of Columbia Official Code is amended to read as follows: Amend, § 16-2307

"(d)(1)(A) Except as provided in subsection (c) of this section, the Division shall conduct a hearing on each transfer motion to determine whether to transfer the child for criminal prosecution. The hearing shall be held within 30 days (excluding Sundays and legal holidays) after the filing of the transfer motion. Upon motion of the child or the Corporation Counsel, for good cause shown, the hearing may be continued for an additional period not to exceed 30 days (excluding Sundays and legal holidays). If the hearing commences more than 60 days (excluding Sundays and legal holidays) after the filing of the transfer motion, the Division must state in the order the extraordinary circumstances for the delay.

"(B) The judicial decision whether to transfer the child shall be made within 30 days (excluding Sundays and legal holidays) after the conclusion of the transfer hearing. For good cause shown, the Division may extend the time in which to issue its decision by an additional period not to exceed 30 days (excluding Sundays and legal holidays).

"(2)(A)The Division shall order the transfer if it determines that it is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation of the child.

"(B) A statement of the Division's reasons for ordering the transfer shall accompany the transfer order. The Division's findings with respect to each of the factors set forth in subsection (e) of this section relating to the public welfare and protection of the public security shall be included in the statement. The statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.".

TITLE V. JUVENILE DISPOSITION.
Sec. 501. Short title.
This title may be cited as the "Juvenile Disposition Act of 2004".

Sec. 502. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2309(a) is amended as follows: Amend, § 16-2309

(1) Paragraph (7) is amended by striking the word "or" at the end.

(2) Paragraph (8) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (9) is added to read as follows:

"(9) by a law enforcement officer when the officer has reasonable grounds to believe that the child has violated a court order.".

(b) Section 16-2317 is amended as follows: Amend, § 16-2317

(1) Subsection (c)(2) is amended by striking the phrase "In the absence of evidence to the contrary, a finding of the commission of an act which would constitute a criminal offense if committed by an adult is sufficient to sustain a finding of need for care or rehabilitation in delinquency and need of supervision cases." and inserting the phrase "There shall be a rebuttable presumption that a finding of the commission of an act which would

constitute a criminal offense if committed by an adult is sufficient to sustain a finding of need for care or rehabilitation in delinquency and need of supervision cases." in its place.

(2) Subsection (d) is amended to read as follows:

"(d)(1) If the Division finds that the child is not in need of care and rehabilitation, it shall terminate the proceedings and discharge the child from detention, shelter care, or other restriction previously ordered.

"(2) Determinations of whether a child is in need of care or rehabilitation may only be made at or after the dispositional hearing, except that the Division may dismiss the petition and terminate proceedings, after giving the Corporation Counsel a reasonable opportunity to initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21, if the Division finds that the respondent is incompetent to proceed and that there is not a substantial probability that the respondent will attain competency in the reasonably foreseeable future. If the Division dismisses the petition based on the respondent's incompetence to proceed, the dismissal shall be without prejudice to the government to refile if the respondent attains competence.

"(3) To overcome the presumption of a need for care or rehabilitation in subsection (c) of this section, the Division must find by clear and convincing evidence at the dispositional hearing that the child is not in need of care or rehabilitation before it may terminate proceedings.

"(4) The fact that a child is receiving care or rehabilitation in another case shall not be the only grounds for dismissal.".

(c) Section 16-2322(c) is amended by striking the phrase "Director of Social Services" and inserting the phrase "Director of Social Services or the Corporation Counsel" in its place. **Amend, § 16-2322**

TITLE VI. VICTIMS OF JUVENILE OFFENDERS BILL OF RIGHTS AND DELINQUENCY ACCOUNTABILITY.

Sec. 601. Short title.

This title may be cited as the "Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability Act of 2004".

Sec. 602. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended as follows:

(1) Add the phrase "16-2320.01. Restitution." after the phrase "16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.".

(2) Add the phrase "16-2340. Treatment of victim or eyewitness of delinquent acts; rights of victims or eyewitnesses in delinquency proceedings; privacy and security of victims or eyewitnesses in delinquency proceedings." after the phrase "16-2339. Immunity for juveniles who are eyewitnesses in juvenile proceedings.".

(b) Section 16-2315 is amended by adding a new subsection (f) to read as follows: **Amend, § 16-2315**

"(f) Upon request of the Corporation Counsel, or his or her designee, the Division shall hold a hearing to determine whether there is probable cause to believe that a victim or eyewitness to a delinquent act alleged to have been committed by the respondent may have been put at risk for the HIV/AIDS virus. If the Division finds there is probable cause that a victim or eyewitness has been put at risk for the HIV/AIDS virus as a result of witnessing or being the victim of the delinquent act alleged to have been committed by the respondent, the Division

shall order that the respondent be tested for the HIV/AIDS virus. The results of the child's HIV/AIDS testing shall be presented to the Corporation Counsel, or his or her designee, who shall provide the information to the respondent and to the victim or eyewitness to a delinquent act. The victim or eyewitness may only disclose the respondent's identity to a doctor or counselor.".

(c) Section 16-2316(e) is amended to read as follows: Amend, § 16-2316

"(e)(1) All hearings and proceedings under this subchapter shall be recorded by appropriate means.

"(2) Except in hearings to declare an adult in contempt of court, the general public shall be excluded from hearings arising under this subchapter.

"(3) Except as provided in paragraph (4) of this subsection, only persons necessary to the proceedings shall be admitted, but the Division may, pursuant to rule of the Superior Court of the District of Columbia, admit such other persons (including members of the press) as have a proper interest in the case or the work of the court on condition that they refrain from divulging information identifying the child or members of the child's family involved in the proceedings.

"(4) In cases involving delinquency proceedings, the victims and eyewitnesses and the immediate family members and custodians of the victims and eyewitnesses shall have a right to attend transfer, factfinding, disposition, and post-disposition hearings, subject to the rule on witnesses. Immediate family members and custodians of the victims and eyewitnesses shall have a right to be present during the victims' or eyewitnesses' testimony.

"(5) Any person who by virtue of this subsection attends a transfer, factfinding, disposition, or post-disposition hearing shall be bound by the confidentiality requirements of sections 16-2331, 16-2332, and 16-2333, and shall be informed by the Division of these confidentiality requirements and the penalties for their violation as set out in section 16-2336.".

(d) Section 16-2317 is amended as follows: Amend, § 16-2317

(1) Subsection (d), as amended by section 502(b)(2), is amended by adding a new paragraph (5) to read as follows:

"(5) In determining whether a child is in need of care and rehabilitation, the Division shall:

"(A) Consider any victim impact statement submitted to the Division;

"(B) Hear from any eyewitnesses and victims, or the immediate family members of any eyewitnesses or victims when the eyewitness or victim is a child or when the eyewitness or victim is deceased or incapacitated, that wish to be heard and appear before the court; and

"(C) Consider if the dismissal of the case is in the interest of the public welfare and the protection of the public security.".

(2) A new subsection (f) is added to read as follows:

"(f) The Corporation Counsel shall give prompt notice, if practicable, of any disposition and post-disposition hearings to the victim, or the immediate family members or caretakers of the victim, or their duly authorized attorney, when the victim is a child or when the victim is deceased or incapacitated.".

(e) Section 16-2319(a) is amended to read as follows: Amend, § 16-2319

"(a) After a motion for transfer has been filed, or after the Division has made findings pursuant to section 16-2317(c) sustaining the allegations of a petition and, in neglect cases, the conclusion that the child is neglected, the Division shall direct that a predisposition study and report to the Division be made by the Director of Social Services or a qualified agency

designated by the Division concerning the child, the child's family, the child's environment, and other matters relevant to the need for treatment or disposition of the case. The predisposition report shall include, and take into consideration, any victim impact statement submitted by the victim and the victim's immediate family members, the Director of Social Services, or by the Corporation Counsel. Except in connection with a hearing on a transfer motion, no predisposition study or report shall be furnished to or considered by the Division prior to completion of the factfinding hearing.".

Amend, § 16-2320

(f) Section 16-2320 is amended by adding a new subsection (c-2) to read as follows:

"(c-2) When determining what disposition shall be ordered under subsection (c) of this section, the Division shall consider any victim impact statement submitted to the Division and the victim, or the immediate family members of the victim when the victim is a child or when the victim is deceased or incapacitated, shall have the right to make a statement at the disposition hearing. The absence of the victim at disposition shall not preclude the court from holding the hearing.".

(g) A new section 16-2320.01 is added to read as follows:

"§ 16-2320.01. Restitution.

"(a)(1) Upon request of the Corporation Counsel, the victim, or on its own motion, the Division may enter a judgment of restitution in any case in which the court finds a child has committed a delinquent act and during or as a result of the commission of that delinquent act has:

"(A) Stolen, damaged, destroyed, converted, unlawfully obtained, or substantially decreased the value of the property of another;

"(B) Inflicted personal injury on another, requiring the injured person to incur medical, dental, hospital, funeral, or burial expenses, or lost wages; or

"(C) Caused the victim of the delinquent act to incur reasonable counseling or other mental health expenses from a licensed health care provider if the delinquent act involved personal injury, child or sexual abuse, robbery, or burglary.

"(2) The Division may order the parent or guardian of a child, a child, or both to make restitution to:

"(A) The victim;

"(B) Any governmental entity;

"(C) A third-party payor, including an insurer, that has made payment to the victim to compensate the victim for a property loss under paragraph (1)(A) of this subsection or pecuniary loss under paragraph (1)(B) or (C) of this subsection.

"(3) Payment of restitution to a victim under this section has priority over payments of restitution to a third-party payor or to any governmental entity.

"(4) If the victim has been compensated for the victim's loss by a third-party payor, the Division may order restitution payments to the third-party payor in the amount that the third-party payor compensated the victim.

"(b) The Division may order the child to make restitution directly to the victim, governmental entity, or third-party payor after consideration of the age, circumstances, and financial ability of the child to pay. The Division may order the parent or guardian to make restitution directly to the victim, governmental entity, or third-party payor after consideration of the parent or guardian's financial ability to pay.

"(c)(1) A judgment of restitution under this section may not exceed:

"(A) As to property stolen, destroyed, converted, or unlawfully obtained, the lesser of the fair market value of the property or $10,000;

"(B) As to property damaged, or substantially decreased in value, the lesser of the amount of damage or the decrease in value of the property, not to exceed the fair market value of the property, or $10,000;

"(C) As to personal injuries inflicted, the lesser of the actual medical, dental, hospital, funeral, and burial expenses incurred by the injured person as a result of the injury or $10,000;

"(D) As to counseling or mental health expenses, the lesser of the actual expenses incurred by the injured person as a result of the incident or $10,000.

"(2) As an absolute limit in each case against any one child, his or her parents or guardians, or both, a judgment rendered under this section may not exceed $10,000 for all acts arising out of a single incident.

"(d) A restitution hearing to determine the liability of a parent or guardian, a child, or both, shall be held within 30 days after the disposition hearing and may be extended by the Division for good cause. A hearing under this section may be held as part of a factfinding or disposition hearing for the child. A judgment of restitution against a parent or guardian may not be entered unless the parent or guardian has been afforded a reasonable opportunity to be heard and to present appropriate evidence in the parent or guardian's behalf.

"(e) In a restitution hearing, a written statement or bill for medical, dental, hospital, funeral, or burial expenses, or repair and replacement of property shall be prima facie evidence that the amount indicated on the written statement or bill represents a fair and reasonable charge for the services or materials provided. The burden of proving that the amount indicated on the written statement or bill is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

"(f) Upon request of the Corporation Counsel or the recipient of a judgment of restitution, the Division may enforce the judgment for restitution under this section in the same manner that a monetary judgment is enforced by the Superior Court of the District of Columbia under Title 15 and applicable court rules.

"(g) The Director of Social Services shall be responsible for monitoring the collection and disbursement of restitution payments when the judgment of restitution provides that restitution is to be made in periodic or installment payments.

"(h) A judgment of restitution under this section shall not preclude a civil action to recover damages from the child, parent, or guardian. A civil verdict shall be reduced by the amount paid under the judgment of restitution. A judgment of restitution may be filed under seal in any civil case.

"(i) If at the restitution hearing the Division finds that a child is financially unable to pay restitution pursuant to subsection (b) of this section, the Division may order the child to perform community service or some other non-monetary service of equivalent value in lieu thereof. If at the restitution hearing the Division finds that a parent or guardian is financially unable to pay restitution pursuant to subsection (b) of this section, the Division may order the parent or guardian to perform community service or some other non-monetary service of equivalent value in lieu thereof.".

(h) A new section 16-2340 is added to read as follows:

"§ 16-2340. Rights of victims or eyewitnesses in delinquency proceedings.

"(a) A victim or a eyewitness of a delinquent act should:

"(1) Be treated with dignity, respect, courtesy, sensitivity, and with respect for the victim's or eyewitness' privacy;

"(2) Be notified in advance of dates and times of juvenile factfinding hearings,

transfer hearings, disposition hearings, and post-disposition hearings;

"(3) During any phase of the investigative proceedings or court proceedings, be provided, to the extent practicable, a waiting area that is separate from the child alleged to be delinquent and the family and friends of the child alleged to be delinquent;

"(4) Be informed by the appropriate juvenile justice agency of financial assistance, criminal injuries compensation, and any other social services available to the victim, and receive assistance or information on how to apply for such programs;

"(5) Be advised of the right to have stolen or other property promptly returned and, on written request, have the property promptly returned by law enforcement agencies when means can be employed to otherwise satisfy evidentiary requirements for prosecution, unless there is a compelling law enforcement reason for retaining the stolen property; and

"(6) Be informed, in appropriate cases, by the Corporation Counsel of the right to request restitution.

"(b) A victim and the victim's immediate family members have the right to submit a victim impact statement in all cases and have the victim impact statement considered in the disposition of the case. The Corporation Counsel and the Director of Social Services shall inform the victim and the victim's immediate family members or caretaker, or their duly authorized attorney, of such right.

"(c) Before, during, and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that may occur between the respondent, or respondent's family and witnesses for respondent, and the victim, eyewitnesses for the Corporation Counsel, and the family of the victim or the Corporation Counsel's eyewitnesses.

"(d) Except as otherwise mandated by law, the District government shall not be required to disclose the names or addresses of its witnesses prior to a hearing.

"(e) The respondent, the respondent's attorney or another person acting on behalf of the respondent shall clearly identify himself or herself as being, representing, or acting on behalf of the respondent at the beginning of any contact with the victim, the victim's family, or other persons believed to be eyewitnesses to the offenses charged.

"(f) Nothing in this section shall be construed as creating a cause of action against the District of Columbia, any public official, employee, or public agency responsible for implementing or carrying out the provisions of this section.".

TITLE VII. RELEASE OF CERTAIN CHILDREN IN NEED OF SUPERVISION.

Sec. 701. Short title.

This title may be cited as the "Release of Certain Children in Need of Supervision Act of 2004".

Amend, § 16-2320

Sec. 702. Section 16-2320(d) of the District of Columbia Official Code is amended to read as follows:

"(d) No child found in need of supervision, as defined by section 16-2301(8), unless also found delinquent, shall be committed to or placed in an institution or facility for delinquent children, but shall be released to the child's parent, guardian, or custodian, unless the return of the child will result in placement in, or return to, an abusive situation, or the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child. If the return of the child will result in placement in, or return to, an abusive situation, or if the child's parent,

guardian, or custodian is unwilling or unable to care for or supervise the child, the Child and Family Services Agency shall open a neglect investigation.".

TITLE VIII. PERIODIC EVALUATIONS.

Sec. 801. Short title.

This title may be cited as the "Periodic Evaluations Act of 2004".

Amend, § 16-2323

Sec. 802. Section 16-2323 of the District of Columbia Official Code is amended by adding new subsections (g) and (h) to read as follows:

"(g) When a child has been adjudicated delinquent and a dispositional order has been entered by the Division pursuant to section 16-2320, the Director of Court Social Services or the Youth Services Administration, whichever is responsible for supervision of the disposition order, shall conduct periodic evaluations of the child to:

"(1) Determine if rehabilitative progress has been made and if the services provided to the child have been effective; and

"(2) Determine, in conjunction with the child, the child's attorney, and the Corporation Counsel, what steps, if any, should be taken to ensure the rehabilitation and welfare of the child and the safety of the public.

"(h)(1) Not more than once in a 6-month period, the child, or the child's parent or guardian, may petition the Division to modify a dispositional order, issued pursuant to section 16-2320, on the grounds that the child is not receiving appropriate services or level of placement.

"(2) If the Division finds that the child is not receiving appropriate services or level of placement, the Division may specify a plan for services that will promote the rehabilitation and welfare of the child and the safety of the public, except that the Division may not specify the treatment provider or facility.".

Amend, § 16-2324

Sec. 803. Section 16-2324 of the District of Columbia Official Code is amended as follows:

(a) The section heading is amended by striking the word "Modification" and inserting the word "Vacation" in its place.

(b) Designate the existing language as subsection (a).

(c) A new subsection (b) is added to read as follows:

"(b) Not less than 6 months after issuing an order pursuant to section 16-2323(h)(2), the Division may terminate an order under this subchapter on the grounds that the Youth Services Administration is not providing or cannot provide appropriate services or level of placement.".

TITLE IX. INDIVIDUALIZED TREATMENT PLAN.

Sec. 901. Short title.

This title may be cited as the "Individualized Treatment Plan Act of 2004".

Amend, § 16-2319

Sec. 902. Section 16-2319 of the District of Columbia Official Code is amended by adding new subsections (d) through (g) to read as follows:

"(d) When a child has been adjudicated delinquent and a dispositional order has been entered by the Division under sections 16-2317 and 16-2320 transferring legal custody of a child to the custody of the Youth Services Administration, the Youth Services Administration shall conduct an evaluation of the child to determine the appropriate services and to develop an

individualized treatment plan for the child.

"(e) The Youth Services Administration shall examine the child and investigate all pertinent circumstances in the child's background that will contribute to the development of the individualized treatment plan.

"(f) The Youth Services Administration shall complete an initial assessment of the child within 3 days of taking legal custody of the child and receipt of the social file from the Director of Court Social Services and shall develop the individualized treatment plan within 14 days of completing the initial assessment of the child, unless a longer diagnostic phase is needed for the child and is justified in writing in the child's initial assessment. If the Youth Services Administration does not receive the social file within 7 days of the disposition order, the Division shall order the Director of Court Social Services to immediately produce the social file.

"(g) The Division may, on its own motion or the motion of any party, for good cause shown, extend the time periods set forth in subsection (f) of this section for completion of the initial assessment and the individualized treatment plan.".

TITLE X. PARENTAL PARTICIPATION AND ACCOUNTABILITY.

Sec. 1001. Short title.

This title may be cited as the "Parental Participation and Accountability Act of 2004".

Sec. 1002. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2305(c) is amended as follows: **Amend, § 16-2305**

(1) Designate the existing language as paragraph (1).

(2) A new paragraph (2) is added to read as follows:

"(2) Where the delinquency petition filed by the Corporation Counsel is the 3rd petition filed against a child and the child is 13 years old or younger, the Child and Family Services Agency shall institute a child neglect investigation against the parent, guardian, or custodian of the child.".

(b) Section 16-2325.01 is amended as follows: **Amend, § 16-2325.01**

(1) Subsection (a) is amended as follows:

(A) Strike the word "may" and insert the word "shall" in its place.

(B) Strike the period at the end and insert the phrase ", unless the court determines that such an order in not in the best interest of the child." in its place.

(2) Subsection (b) is amended by striking the word "may" and inserting the word "shall" in its place.

(3) Subsection (c) is amended by striking the phrase "an order of participation" and inserting the phrase "an order issued under this section" in its place.

TITLE XI. DETENTION AND COMMITMENT FACILITIES.

Sec. 1101. Short title.

This title may be cited as the "Detention and Commitment Facilities Improvement Act of 2004".

Sec. 1102. Closure of Oak Hill Youth Center; transfer of operations to new facilities.

"The Mayor shall develop and implement a comprehensive plan resulting in the closure of the existing Oak Hill Youth Center facility no later than 4 years after the effective date of this

act and transfer operations to new facilities, one or more of which shall be located on the same property, consistent with the following criteria for a new rehabilitation and treatment model:

"(1) No new facility for committed youth shall house more than 40 committed children within the same building, but a facility may contain more than one building;

"(2) Plans for the operation of facilities shall incorporate best practices for the provision of rehabilitative and other services and the safety of children, and shall be consistent with the applicable standards of accreditation of the American Correctional Association;

"(3) Individuals appointed by the Mayor shall provide on-site monitoring of the safety of children housed in any secure detention or commitment facility operated by the District of Columbia during all hours of operation; and

"(4) Individuals responsible for monitoring the safety of children under paragraph (3) of this subsection shall notify the child's parent or guardian and the child's legal representative whenever a child is injured.".

TITLE XII. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

Sec. 1201. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 1202. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Linda W. Cropp
Chairman
Council of the District of Columbia

Anthony A. Williams
Mayor
district of Columbia
APPROVED
November 29, 2004

AN ACT

D.C. ACT 15-638

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 30, 2004

Codification District of Columbia Official Code

2001 Edition

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To enact a new captive insurance company act to permit the chartering and operation of captive insurance companies in the District of Columbia; to provide for the licensing and regulation of captive insurers; to authorize the creation of segregated accounts; to establish minimum amounts of capital and surplus that must be maintained by a captive insurer; to establish the investments that captive insurers are permitted to make, governing reinsurance transactions; to provide for a premium tax; to establish minimum requirements for transacting business; to require the filing of an annual financial report; to authorize the Commissioner of the Department of Insurance, Securities, and Banking to perform financial examinations; to grant enforcement authority governing insolvency proceedings and redomestications of captive insurers; to exempt licensed captive insurers from certain taxes; to authorize the Commissioner to adopt regulations; to repeal the Captive Insurance Company Act of 2000 and to provide transition provisions; to amend the Insurance Regulatory Trust Fund Act of 1993 to establish an account within the Insurance Regulatory Trust Fund for the purpose of funding the expenses of the captive insurance activities of the Department in the discharge of all of its administrative, regulatory, and marketing functions under this act; and to amend the Risk Retention Act of 1993 to provide that a risk retention group shall be chartered as an association captive insurer and shall be subject to this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Captive Insurance Company Act of 2004".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Affiliated company" means a company in the same corporate system as its parent or a member organization by virtue of common ownership, control, operation, or management.

(2) "Agency captive insurer" means a captive insurer that is owned by an insurance agency or brokerage and that only insures risks of policies that are placed by or through the agency or brokerage.

(3) "Alien captive insurer" means any non-U.S. insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a foreign country that imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in the jurisdiction.

(4) "Association" means a legal entity consisting of 2 or more individuals, corporations, partnerships, associations, or other forms of business organization.

(5) "Association captive insurer" means a captive insurer that only insures risks of the member organizations of an association and the affiliated companies of those members, including groups formed pursuant to the Product Liability Risk Retention Act of 1981, approved September 25, 1981 (95 Stat. 949; 15 U.S.C. § 3901 *et seq.*), and the employee benefit plans or trusts of such organizations or companies.

(6) "Branch business" means any insurance business transacted by a branch captive insurance company in the District.

(7) "Branch captive insurer" means any alien captive insurer licensed by the Commissioner to transact the business of insurance in the District through a business unit with a principal place of business in the District.

(8) "Branch operations" means any business operations of a branch captive insurer in the District.

(9) "Captive insurer" means any insurer that insures the risks of its parent or affiliated companies of its parent, any member organizations of an association and the affiliated companies of the member organizations, or any other policyholders or participants that have entered into a contractual relationship with the insurer for the purchase of insurance, including any pure captive insurer, association captive insurer, agency captive insurer, segregated account captive insurer, and rental captive insurer licensed pursuant to this act.

(10) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.

(11) "Common ownership and control" means:

(A) In the case of a stock insurer, the direct or indirect ownership of 51% or more of the voting stock of 2 or more corporations by the same member or members; and

(B) In the case of a mutual insurer, the direct or indirect ownership of 51% or more of the surplus and the voting power of 2 or more corporations by the same member or members.

(12) "Department" means the Department of Insurance, Securities, and Banking.

(13) "Excess workers' compensation insurance" means insurance in excess of the specified per-incident or aggregate limit, if any, established by:

(A) The Commissioner, if the insurance is being transacted in the District; or

(B) The chief regulatory officer for insurance in the jurisdiction in which the insurance is being transacted.

(14) "Member organization" means any individual, corporation, partnership, association, or other form of business organization that belongs to an association.

(15) "Mutual insurer" means an incorporated insurer without any issued and outstanding stock whose capital and surplus are owned by its policyholders.

(16) "Net direct premiums" means the direct premiums collected or contracted for on policies or contracts of insurance written by a captive insurer during the preceding calendar year, less the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(17) "Parent" means a corporation, partnership, association, or other form of business organization that directly or indirectly owns, controls, or holds power to vote more than 51% or more of the outstanding voting securities of a pure captive insurer.

(18) "Participant" means any individual or organization, and any affiliates thereof, that are insured by a segregated account captive insurer if the losses of the person are limited through a participant contract to the assets of a segregated account.

(19) "Participant contract" means a contract by which a segregated account captive insurer insures the risks of a participant and limits the losses of the participant to the assets of the segregated account.

(20) "Person" means any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, an association, joint stock company, trust, unincorporated organization, similar entity, or any combination of the foregoing.

(21) "Provisional certificate of authority" means a certificate of authority issued to a captive insurer that authorizes the captive insurer to engage in limited activities authorized by the Commissioner.

(22) "Pure captive insurer" means a captive insurer that only insures or reinsures risks of its parent and affiliated companies or controlled unaffiliated business. The parent of a pure captive insurer includes an employee benefit plan or trust.

(23) "Reciprocal insurer" includes an interinsurance exchange or a risk retention group as defined in section 2(12) of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4101(12)).

(24) "Redomestication" means the transfer to the District of the insurance domicile of an authorized foreign or alien insurance company.

(25) "Rental captive insurer" means a captive insurer formed to enter into contractual agreements with policyholders or associations to offer some or all of the benefits of a program of captive insurance and that only insures risks of the policyholders or associations.

(26) "Segregated account" means a separate account established and maintained by any captive insurer:

(A) In which the minimum capital and surplus required by applicable law is provided by one or more persons;

(B) That is formed or licensed under the provisions of this act;

(C) That insures risks of separate participants through contract;

(D) That is comprised of one or more participants who are authorized to act on matters relating to the segregated account; and

(E) That segregates each participant's liability through one or more segregate accounts.

(27) "Stock insurer" means an incorporated insurer with issued and outstanding stock whose capital and surplus is owned by its stockholders.

Sec. 3. Authority to do business; prohibited activities.

(a) A captive insurer may be organized and operated in any form of business organization authorized by the Commissioner and may, pursuant to this act, transact any insurance or annuity business.

(b) Notwithstanding subsection (a) of this section, a captive insurer shall not:

(1) Directly provide personal motor vehicle or homeowners' insurance coverage, or any component thereof;

(2) Accept or cede reinsurance, except as otherwise provided in section 8;

(3) Insure any risks other than those of its parent and affiliated companies if it is a pure captive insurer;

(4) Insure any risks other than those of the member organizations of its association and the affiliated companies of the member organizations if it is an association captive insurer;

(5) Insure any risks other than those of the policies that are placed by or through the insurance agency or brokerage that owns the captive insurer if it is an agency captive insurer;

(6) Insure any risks other than those of the policyholders or associations that have entered into agreements with the rental captive insurer for the insurance of those risks if it is a rental captive insurer, and shall use a form approved by the Commissioner for these agreements;

(7) Provide excess workers' compensation insurance to its parent and affiliated companies if the transaction is prohibited by the laws of the state in which the insurance is transacted;

(8) Reinsure workers' compensation insurance provided pursuant to a program of self-funded insurance of its parent and affiliated companies unless:

(A) The parent or affiliated company which is providing the self-funded insurance is certified as a self-insured employer by the Commissioner, if the insurance is being transacted in the District; or

(B) The program of self-funded insurance is otherwise qualified pursuant to, or in compliance with, the laws of the state in which the insurance is transacted; or

(9) Write insurance or reinsurance for employee benefits that are subject to the provisions of the provisions of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 832; 29 U.S.C. § 1001 *et seq.*), for any entity except its parent and affiliated companies.

(c) Notwithstanding subsections (a) and (b) of this section, the Commissioner may authorize a captive insurer that is otherwise qualified to conduct business in the District to engage in any activity in any form permitted by a captive insurer in any other jurisdiction.

(d) A captive insurer shall file with the Commissioner a written request to engage in any activity under subsection (c) of this section. The Commissioner shall approve the request within 30 days after receiving the request, unless the Commissioner determines that the activity will be harmful to the captive insurer's policyholders.

(e) For the purposes of this act, a branch captive insurer shall be deemed to be a pure captive insurer with respect to operations in the District, unless otherwise permitted by the Commissioner.

Sec. 4. Organizational requirements for transacting business; incorporation.

(a) A captive insurer may be organized in the District in any form of authorized by the Commissioner.

(b) The articles of incorporation or organizational documents of a captive insurer shall satisfy the following minimum requirements:

(1) The capital stock of a captive insurer incorporated as a stock insurer shall be issued at not less than par value;

(2) The captive insurer shall not have less than 2 incorporators or organizers;

(3) The articles of association, articles of incorporation, articles of organization, charter, or bylaws of a captive insurer shall require a quorum of the board of directors that consists of more than 1/3 of the number of directors prescribed by the articles of association, articles of incorporation, articles of organization (or equivalent organizational document), charter, or bylaws; and

(4) Any additional provisions that the Commissioner considers necessary.

(c) The Commissioner may, at the request of the captive insurer, issue a certificate of good standing and charge a fee for each certificate in an amount to be established by the Commissioner.

(d) An attorney-in-fact of a reciprocal captive insurer may be organized in the District in any form of business, including as an individual, authorized by the Commissioner.

(e) A captive insurer organized in the District shall have the privileges of, and shall be subject to, the provisions of general corporation law set forth in the District of Columbia Business Corporation Act, effective September 10, 1992 (D.C. Law 9-144; D.C. Official Code § 29-101.01 *et seq.*), the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 265; D.C. Official Code § 29-301.01 *et seq.*), and the Limited Liability Company Act of 1994, effective July 23, 1994 (D.C. Law 10-138; D.C. Official Code § 29-1001 *et seq.*), and the applicable provisions contained in this act. If the provisions of this act conflict with the general provisions of the acts codified in Title 29 of the District of Columbia Official Code, the provisions of this act shall control.

(f) The Commissioner may regulate the manager of a captive insurer.

Sec. 5. Segregated accounts.

(a) A captive insurer may form one or more segregated accounts to insure risks of one or more participants.

(b) A captive insurer that maintains a segregated account shall, at the time of paying the annual fee, pay an additional annual fee in an amount to be established by the Commissioner for each segregated account.

(c) A captive insurer may create one or more segregated accounts to segregate its assets and liabilities from the assets and liabilities of its segregated accounts. The assets and liabilities of each segregated account shall be held separately from the assets and liabilities of all other segregated accounts.

(d) A captive insurer shall be a single legal entity and each segregated account of or within a captive insurer may be established as a separate legal entity, which shall constitute a legal entity separate from the captive insurer. Each segregated account shall be separately identified or designated as being a part of the captive insurer.

(e) A captive insurer may create and issue shares in one or more classes or series for one or more segregated accounts. The proceeds of the issue shall be included in the assets of the segregated account that issued the shares.

(f) The proceeds of the issue of shares, other than segregated account shares, shall be included in the captive insurer's general assets.

(g) A captive insurer may pay a dividend on segregated account shares of any class or series whether or not a dividend is declared on any other class or series of segregated account shares, or any other shares.

(h) Segregated account dividends may be paid on the segregated account shares from the segregated account assets. The dividends shall only be paid to the shareholders of the segregated account from which the segregated account shares were issued and otherwise in accordance with the rights of the shares.

(i) Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement which is to be binding on or to inure to the benefit of a segregated

account or accounts shall be executed by the captive insurer for and on behalf of such segregated account or accounts, shall be identified, and, if in writing, shall indicate that the execution is in the name of, or by or for the account of, the segregated account or accounts.

(j) If a captive insurer is in breach of subsection (i) of this section:

(1) The directors of the captive insurer shall, notwithstanding any provisions to the contrary in the captive insurer's organizational documents or in any contract with the company or otherwise, incur personal liability for the liabilities of the captive insurer and the segregated account under this act, matter, deed, agreement, contract, instrument, or arrangement that was executed; and

(2) Unless they were fraudulent, reckless, negligent, or acted in bad faith, the directors of the captive insurer shall have a right of indemnity:

(A) In the case of a matter on behalf of or attributable to a segregated account or accounts; against the assets of that account or accounts.

(B) In the case of a matter not on behalf of or attributable to any segregated account or accounts, against the general assets of the captive insurer.

(k) Notwithstanding the provisions of subsection (j)(1) of this section, a court may relieve a director of all or part of this personal liability thereunder if he or she satisfies the court that he or she should be relieved because:

(1) The director was not aware of the circumstances giving rise to the liability and, in being not so aware, the director was not fraudulent, reckless, or negligent, and did not act in bad faith; or

(2) The director expressly objected, and exercised his or her rights as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to the liability.

(l) If , pursuant to the provisions of subsection (k) of this section, the court relieves a director of all or part of his or her personal liability under subsection (j)(1) of this section, the court may order that the liability in question shall instead be met from such of the segregated account or general assets of the account of the captive insurer as may be specified in the order.

(m) Any provision in the organizational documents of a captive insurer, or any other contractual provision under which the captive insurer may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection (j)(2) of this section, shall be void.

(n) The assets of a captive insurer shall be either segregated account assets or general assets. The segregated account assets shall comprise the assets of the captive insurer held within or on behalf of the segregated accounts of the captive insurer. The general assets of a captive insurer shall comprise the assets of the captive insurer which are not segregated account assets.

(o) The assets of a segregated account are comprised of assets representing the capital stock and reserves attributable to the segregated account or all other assets attributable to or held

within the segregated account. For the purposes of this subsection, "reserves" includes retained earnings, capital surplus, and paid-in capital.

(p) The directors of a captive insurer shall establish and maintain, or cause to be established and maintained, procedures:

(1) To segregate, and keep segregated, account assets separate and separately identifiable from general assets;

(2) To segregate, and keep segregated, account assets of each segregated account separate and separately identifiable from segregated account assets of any other segregated account; and

(3) If relevant, to apportion or transfer assets and liabilities between segregated accounts, or between segregated accounts and general assets, of the segregated account captive insurer.

(q) Segregated account assets shall:

(1) Only be available and used to meet liabilities of the creditors with respect to that segregated account, and those creditors shall thereby be entitled to have recourse to the segregated account assets attributable to that segregated account; and

(2) Not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the captive insurer who are not creditors with respect to a particular segregated account, and those creditors shall not be entitled to have recourse to the protected segregated account assets.

(r) If a liability of a captive insurer to a person arises from a matter, or is otherwise imposed, with respect to a particular segregated account, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to:

(1) First, the segregated account assets attributable to the segregated account; and

(2) Second, the captive insurer's general assets, to the extent that the segregated account assets attributable to the segregated account, are insufficient to satisfy the liability, and to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this act.

(s) If a liability of a captive insurer to a person arises otherwise than from a matter in respect of a particular segregated account or accounts, or is imposed otherwise than in respect of a particular segregated account or accounts, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to the captive insurer's general assets.

(t) Liabilities of a captive insurer not attributable to any of its segregated accounts shall be discharged from the account captive insurer's general assets. Income, receipts, and other property or rights of or acquired by a captive insurer not otherwise attributable to any segregated account shall be attributed to the captive insurer's general assets to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this act.

(u)(1) Each segregated account shall be accounted for separately on the books and records of the captive insurer to reflect the financial condition and results of operations of the segregated account, including net income or loss, dividends, or other distributions to participants, and such other factors as may be provided by the participant contract or required by the Commissioner.

(2) No sale, exchange, or other transfer of assets shall be made by the captive insurer between or among any of its segregated accounts without the written consent of the segregated accounts and the Commissioner.

(3) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a segregated account to any person without the Commissioner's prior written approval and the approval shall not be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment with respect to the segregated account.

(4) Each segregated account captive insurer shall annually file with the Commissioner such financial reports as the Commissioner shall require, which shall include financial statements detailing the financial experience of each segregated account.

(5) Each captive insurer shall notify the Commissioner within 10 business days of any segregated account that is insolvent or otherwise unable to meet its claims or expense obligations.

(6) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new segregated account or the withdrawal of any participant from any existing segregated account shall constitute a change in the strategic business plan of that segregated account requiring the Commissioner's prior written approval.

(v) Any person or legal entity may be a participant in a segregated account formed or licensed under this act.

(w) A participant in a segregated account need not be a shareholder insured within the segregated account or by the captive insurer or any affiliate thereof.

Sec. 6. Liquidation and rehabilitation of segregated accounts.

(a) Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a captive insurer, the liquidator:

(1) Shall deal with the company's assets only in accordance with the procedures set forth in subsection (c)(6) of this section; and

(2) In the discharge of the claims of creditors of the captive insurer, shall apply the captive insurer's assets to those entitled to have recourse thereto under the provisions of section 5.

(b)(1) A petition for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer may be made by:

(A) The segregated account captive insurer;

(B) The majority of the directors of the segregated account captive insurer;

(C) Any creditor of the segregated account; or

(D) The Commissioner.

(2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer shall be served upon:

(A) The captive insurer;

(B) The Commissioner; and

(C) Such other persons as the court may direct.

(c)(1) Subject to the provisions of this section, the court may make a liquidation or rehabilitation order with respect to a segregated account if, in relation to a captive insurer, the court is satisfied that the:

(A) Segregated account assets attributable to a particular segregated account of the captive insurer, and in those cases where creditors of the captive insurer with respect to that segregated account are entitled to have recourse to the captive insurer's general assets, are or are likely to be insufficient to discharge the claims of creditors with respect to that segregated account; and

(B) Making of an order under this section would achieve the purposes set forth in paragraph (3) of this subsection.

(2) A liquidation or rehabilitation order may be made with respect to one or more segregated accounts.

(3) A liquidation or rehabilitation order shall direct that the business and segregated account assets of, or attributable to, a segregated account shall be managed by a liquidator or rehabilitator specified in the order for the purpose of:

(A) The orderly closing or rehabilitation of the business of, or attributable to, the segregated account; and

(B) The distribution of the segregated account assets, or assets attributable to the segregated account, to those having recourse thereto.

(d) The liquidator or rehabilitator of a segregated account:

(1) Shall have all the functions and powers of the directors responsible for the business and segregated account assets of, or attributable to, the segregated account;

(2) May at any time apply to the court for directions as to the extent or exercise of any function or power, for the liquidation or rehabilitation order to be discharged or varied, or for an order as to any matter occurring during the course of the liquidation or rehabilitation; and

(3) In exercising his functions and powers, shall be deemed to act as the agent of the captive insurer and shall not incur personal liability except to the extent that he acts fraudulently, recklessly, negligently, or in bad faith.

(e) Upon the filing of a petition for, and during the period of operation of, a liquidation or rehabilitation order:

(1) No proceedings shall be instituted or continued by or against the captive insurer or segregated account in respect of which the liquidation or rehabilitation order was made; and

(2) No steps shall be taken to enforce any security or in the execution of legal process in respect of the business or segregated account assets of or attributable to the segregated account in respect of which the liquidation or rehabilitation order was made, except by leave of the court.

(f)(1) During the period of operation of a liquidation or rehabilitation order:

(A) The functions and powers of the directors shall cease with respect to the business of, or attributable to, the segregated account or segregated account assets for which the order was made; and

(B) The liquidator or rehabilitator of the segregated account shall be entitled to be present at all meetings of the captive insurer or segregated account and to vote at such meetings as if he or she were a director of the captive insurer.

(2) Unless there are no creditors that are entitled to have recourse to the captive insurer's general assets, the liquidator's or rehabilitator's voting authority includes matters concerning the captive insurer's general assets.

(g)(1) The Court shall not discharge a liquidation or rehabilitation order issued pursuant to this section unless it appears to the Court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved.

(2) The Court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order or adjourn the proceeding.

(3) Upon the Court issuing an order discharging a liquidation or rehabilitation order for a segregated account on the ground that the purpose for which the order was made had been achieved or substantially achieved, the Court may direct that any payment made by the liquidator or rehabilitator to any creditor of the captive insurer, with respect to that segregated account, shall be full satisfaction of the liabilities of the captive insurer to that creditor with respect to that segregated account, and the creditor's claims against the captive insurer with respect to that segregated account shall be thereby extinguished.

Sec. 7. Capital and surplus.

(a) In addition to any other capital required to be maintained pursuant to subsection (c) of this section, a captive insurer, authorized to do business in the District, shall at all times maintain a minimum unimpaired capital of $100,000.

(b) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the capital required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(c) The Commissioner may require a captive insurer, including each segregated account, to maintain additional unimpaired capital based on the type, volume, and nature of the insurance

business that is transacted by the captive insurer and may determine the amount of capital, if any, that may be in the form of an irrevocable letter of credit.

(d) A letter of credit used by a captive insurer or segregated account as evidence of capital required pursuant to this section shall:

(1) Be issued by a bank chartered in the District or by a branch of a bank located in the District if such bank is a member of the United States Federal Reserve System, or its deposits are insured by the Federal Deposit Insurance Corporation;

(2) Be issued on a form approved by the Commissioner; and

(3) Include a provision pursuant to which a letter of credit is automatically renewed each year.

(e) The Commissioner may approve an ongoing plan for the payment of dividends or other distributions by a captive insurer or segregated account if, at the time of each payment or distribution, the amount of capital and surplus retained by the captive insurer or segregated account is in excess of the amounts required by the Commissioner. The Commissioner shall adopt by rule:

(1) A specific amount that a captive insurer or segregated account must have in excess capital and surplus for the approval of an ongoing plan for the payment of dividends or other distributions; or

(2) A formula pursuant to which the specific amount of required excess capital and surplus may be calculated.

(f) A captive insurer shall not be issued a certificate of authority, and shall not hold a certificate of authority, unless the captive insurer has and maintains, in addition to any other surplus required to be maintained pursuant to subsection (h) of this section, an unencumbered surplus of:

(1) For a pure captive insurer, not less than $150,000;

(2) For an association captive insurer incorporated as a stock insurer, not less than $300,000;

(3) For an agency captive insurer, not less than $300,000;

(4) For a rental captive insurer, not less than $300,000;

(5) For an association captive insurer incorporated as a mutual insurer or reciprocal insurer, not less than $500,000; and

(6) For each segregated account, not less than an amount to be established by the Commissioner.

(g) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the surplus required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(h) The Commissioner may prescribe additional requirements relating to surplus based on the type, volume, and nature of the insurance business that is transacted by a captive insurer

or segregated account and requirements regarding which surplus, if any, may be in the form of an irrevocable letter of credit.

(i) A letter of credit used by a captive insurer or a segregated account as evidence of surplus required pursuant to this section shall meet the same requirements as a letter of credit issued for paid-in capital found subsection (d) of this section.

(j) The parent of a branch captive insurer shall be subject to the jurisdiction of the United States District Court for the District of Columbia for all matters involving the branch captive insurer.

(k) Except as otherwise provided in this section, a captive insurer or segregated account shall pay dividends out of, or make any other distribution from, its capital or surplus, or both, in accordance with the provisions set forth in subsection (e) of this section. A captive insurer or segregated account shall not pay dividends out of, or make any other distribution out of, its capital or surplus or both, in violation of this section unless the captive insurer or segregated account has obtained the prior written approval of the Commissioner to make the a payment or distribution.

Sec. 8. Investments.

(a) A captive insurer shall file with the Commissioner a schedule of its proposed investments, and any material changes thereto, which the Commissioner may approve if he or she determines that the investments do not threaten the solvency or liquidity of the captive insurer. The Commissioner shall not unreasonably disapprove the investments.

(b) A captive insurer or segregated account may make a loan to its parent or affiliated company if the loan:

(1) Is first approved in writing by the Commissioner;

(2) Is evidenced by a note that is in a form that is approved by the Commissioner; and

(3) Does not include any money that has been set aside as capital or surplus as required by section 7(a) or (f).

Sec. 9. Reinsurance.

(a) A captive insurer or segregated account may provide reinsurance on risks ceded by any other insurer, captive insurer, or segregated account.

(b) A captive insurer or segregated account may take credit for the reinsurance of risks or portions of risks ceded to reinsurers in compliance with the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*). Prior approval of the Commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official

Code § 31-501 *et seq.*), except for business written by an alien captive insurer outside of the United States.

(c) In addition to reinsurers authorized under the provisions of the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*), a captive insurer or segregated account may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer which has been authorized by the Commissioner. The Commissioner may require any other documents, financial information, or other evidence that the pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in the Commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurer or segregated account and for the protection and consequent benefit of the public at large.

(d) For all purposes of this act, insurance written by a captive insurer or segregated account of any workers' compensation qualified self-insured plan of its parent or affiliates shall be deemed to be reinsurance.

Sec. 10. Application requirements.

(a) A captive insurer shall apply to the Commissioner for a certificate of authority. If one or more segregated accounts are established as separate legal entities, each segregated account shall apply for a certificate of authority. The application shall include:

(1) A proposed copy of the organizational documents of the captive insurer if the captive insurer has not been organized, or a certified copy of the organizational documents and evidence of good standing if the captive insurer has been organized;

(2) A pro forma financial statement for the captive insurer that has been prepared by a certified public accountant; and

(3) Any other statements or documents that the Commissioner requires to be filed with the application.

(b) A captive insurer shall include in its application for a certificate of authority evidence of:

(1) The amount of liquidity of its assets relative to the risks to be assumed by the captive insurer;

(2) The expertise, experience, and character of the persons who will manage the captive insurer;

(3) The overall soundness of the plan of operation of the captive insurer;

(4) The adequacy of the programs that the captive insurer is providing for loss prevention by its parent or member organizations, as applicable;

(5) Minimum capital and surplus requirements as set forth in section 6(a) and (f); and

(6) Such other information considered to be relevant by the Commissioner in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.

(c) An application by a captive insurer or segregated account for a certificate of authority shall include a nonrefundable application fee to be determined by the Commissioner. The Commissioner may require the applicant to retain independent legal, financial, and examination services from outside the Department to review and make recommendations regarding the applicant's qualifications, and to submit those reports and recommendations to the Commissioner for his or her review. The cost of those services shall be paid by the applicant.

(d) If the Commissioner determines that the documents and statements filed by the captive insurer or segregated account of a captive insurer are complete and satisfy the requirements for a certificate of authority, the Commissioner shall issue a certificate of authority to the captive insurer or segregated account within 30 days. Each certificate shall be renewed each year not later than the 30th day of April succeeding the date of its issuance. The Commissioner may impose an administrative fine or penalty on a captive insurer or segregated account that fails to renew its certificate of authority before August 1. The Commissioner may suspend or revoke the certificate of authority of a captive insurer or segregated account that fails to renew its certificate of authority on or after August 1.

(e) A captive insurer shall pay a fee to be established by the Commissioner for the issuance of a certificate of authority and an annual fee to be established by the Commissioner for the renewal of its certificate of authority. A captive insurer may be required to pay a fee for one or more segregated accounts.

(f) A captive insurer shall include its strategic business plan with its application for the issuance of its certificate of authority. If the captive insurer intends to make any material or substantive changes to its strategic business plan, the captive insurer shall file a copy of the amended strategic business plan with the Commissioner for prior written approval.

Sec. 11. Name.

A captive insurer shall not use or adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other insurer licensed in the District.

Sec. 12. Requirements for transacting business.

(a) A captive insurer shall not transact business in the District unless the captive insurer and, if applicable, each segregated account of a captive insurer, first obtains a certificate of authority from the Commissioner.

(b) In determining whether to grant the approval required in subsection (a) of this section, the Commissioner shall consider:

(1) The character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) The character, reputation, financial responsibility, experience relating to insurance, and business qualifications of the officers and directors (or equivalent managers if other than a corporation) of the captive insurer;

(3) The competence of any person who, pursuant to a contract with the captive insurer, will manage the affairs of the captive insurer;

(4) The competence, reputation, and experience of the legal counsel of the captive insurer relating to the regulation of insurance;

(5) If the captive insurer is a rental captive insurer, the competence, reputation and experience of the underwriter of the captive insurer;

(6) The strategic business plan of the insurer; and

(7) Such other aspects of the captive insurer as the Commissioner considers advisable.

(c) A captive insurer shall:

(1) Maintain an office in the District;

(2)(A) Appoint a person in the District of Columbia, consistent with the requirements of section 646(b) of the Life Insurance Act, approved March 3, 1901 (31 Stat 1209; D.C. Official Code § 31-202(b)), as the agent for service of process and to otherwise act on behalf of the captive insurer in the District.

(B) If the registered agent cannot be located with reasonable diligence for the purpose of serving notice or demand on the captive insurer, the notice or demand may be served on the Commissioner, who shall be deemed to be the agent for the captive insurer;

(3) Make adequate arrangements with a bank chartered in the District, or a branch of a bank located in the District if the bank is a member of the United States Federal Reserve System or its deposits are insured by the Federal Deposit Insurance Corporation;

(4) Employ or enter into a contract with an individual or business organization to manage the affairs of the captive insurer, which individual or business organization shall meet the standards of competence and experience satisfactory to the Commissioner;

(5) Employ or enter into a contract with a qualified, experienced, certified public accountant or a firm of certified public accountants, which accountant or firm shall meet the standards of competence and experience in matters concerning the regulation of insurance in the District, as determined by the Commissioner;

(6) Employ or enter into a contract with qualified, experienced actuaries to perform reviews and evaluations of the operations of the captive insurer; and

(7) Employ or enter into a contract with an attorney who is licensed to practice law in the District, which attorney shall meet the standards of competence and experience in matters concerning the regulation of insurance in the District, as determined by the Commissioner.

(d) The board of directors of a captive insurer shall meet at least one time each year in the District.

(e) Each a segregated account maintained by a captive insurer shall not have to comply with subsection (c) of this section unless the segregated account is organized as a separate legal entity.

(f) Notwithstanding subsection (a) of this section, a captive insurer that obtains a provisional certificate of authority may engage in limited activities as part of the initial organization and capitalization of the captive insurer.

Sec. 13. Tax on premiums collected.

(a) Except as otherwise provided in this section, a captive insurer shall pay to the District, not later than March 2 of each year, a tax at the rate of:

(1) Two hundred fifty thousandths of one percent on the first $25 million of its net direct premiums;

(2) One hundred fifty thousandths of one percent on the next $25 million of its net direct premiums; and

(3) Fifty thousandths of one percent on each additional dollar of its net direct premiums.

(b)(1) Except as otherwise provided in this section, a captive insurer shall pay to the District, not later than March 2 of each year, a tax at the rate of:

(A) Two hundred twenty-five thousandths of one percent on the first $25 million of revenue from assumed reinsurance premiums;

(B) One hundred fifty thousandths of one percent on the next $25 million of revenue from assumed reinsurance premiums; and

(C) Twenty-five thousandths of one percent on each additional dollar of revenue from assumed reinsurance premiums.

(2) The tax on reinsurance premiums pursuant to this subsection shall not be levied on premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (a) of this section. A captive insurer shall not pay any reinsurance premium tax pursuant to this subsection on revenue related to the receipt of assets by the captive insurer in exchange for the assumption of loss reserves and other liabilities of another insurer that is under common ownership and control with the captive insurer, if the transaction is part of a plan to discontinue the operation of the other insurer and the intent of the parties to the transaction is to renew or maintain such business with the captive insurer.

(c) If the sum of the taxes to be paid by a captive insurer, other than a risk retention group licensed as an association captive insurer, calculated pursuant to subsections (a) and (b) of this section is less than $7,500 in any given year, the captive insurer shall pay a minimum tax of $7,500 for the year.

(d) If the sum of the taxes to be paid by a risk retention group, licensed as an association captive insurer, calculated pursuant to subsections (a) and (b) of this section is less than $10,000 in any given year, the captive insurer shall pay a minimum tax of $10,000 for the year.

(e) The total tax paid by a captive insurer shall not exceed $100,000 in any year.

(f) In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the branch captive insurer.

(g) In the case of annuity business, the tax provided for in this section shall not apply.

(h) Notwithstanding any specific statute to the contrary and except as otherwise provided in this subsection, the tax provided for by this section shall constitute all the taxes collectible pursuant to the laws of the District from a captive insurer, and no occupation tax or other taxes shall be levied or collected from a captive insurer by the District, except for real property taxes pursuant to Chapter 8 of Title 47 of the District of Columbia Official Code or personal property taxes pursuant to subchapter II of Chapter 15 of Title 47 of the District of Columbia Official Code.

(i) A captive insurer that is issued a certificate of authority during the last quarter of the calendar year may file a written request with the Commissioner for a reduction in the minimum premium tax obligation calculated pursuant to subsections (c) and (d) of this section. The Commissioner may grant the a request pursuant to an appropriate methodology adopted by rule.

(j) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies, contracts, insurance, or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax obligation under this section.

(k) One hundred percent of the revenues collected from the tax imposed pursuant to this section shall be credited to the account for the regulation and supervision of captive insurers created by section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)).

(l) In determining the amount of premium taxes payable under this section, any insurance contract entered into by a captive insurance company issued a certificate of authority pursuant to this act, regardless of the location of the risk or the domicile of the purchaser, shall be subject to the payment of premium taxes on that transaction to the District of Columbia; provided, that upon presentation of evidence that another jurisdiction has claimed, and the company has paid, premium taxes to that jurisdiction on the same transaction, the company may credit the amount paid to the other jurisdiction against premium taxes owed to the District of Columbia.

Sec. 14. Annual report.

(a) On or before March 2 of each year, a captive insurer shall submit to the Commissioner, on a form prescribed by the Commissioner by regulation, a report of its financial condition, as prepared by a certified public accountant. A captive insurer shall file a consolidated report on behalf of each of its segregated accounts. A captive insurer shall use generally accepted accounting principles and include any useful or necessary modifications or adaptations thereof that have been approved or accepted by the Commissioner for the type of

insurance and kinds of insurers to be reported upon, as supplemented by additional information required by the Commissioner.

(b) A pure captive insurer may apply, in writing, for authorization to file its annual report based on a fiscal year that is consistent with the fiscal year of the parent company of the pure captive insurer. If an alternative date is granted:

(1) The annual report shall be due not later than 60 days after the end of each fiscal year; and

(2) The pure captive insurer shall file on or before March 2 of each year such forms as required by the Commissioner by regulation to provide sufficient detail to support its premium tax return filed pursuant to section 13.

Sec.15. Financial examination.

(a) The Commissioner, or his designee, may visit each captive insurer at such times as he or she considers necessary to thoroughly inspect and examine the affairs of the captive insurer or segregated account of a captive insurer to ascertain:

(1) The financial condition of the captive insurer;

(2) The ability of the captive insurer to fulfill its obligations; and

(3) Whether the captive insurer has complied with the provisions of this act and the regulations adopted pursuant thereto.

(b) The Commissioner may require a captive insurer to retain qualified independent legal, financial, and examination services from outside the Department to conduct the examination and make recommendations to the Commissioner. The cost of the examination shall be paid by the captive insurer.

(c) The provisions of the Law on Examinations Act of 1993, effective October 21, 1993 (D.C. Law 10-49; D.C. Official Code § 31-1401 *et seq.*), shall apply to examinations conducted pursuant to this section.

(d) For purposes of subsection (a) of this section, segregated accounts of a captive insurer shall not be separately examined unless the Commissioner has sufficient cause to examine one or more segregated accounts.

Sec. 16. Revocation, suspension, or fine.

(a) The Commissioner may revoke or suspend the certificate of authority to transact insurance business in the District of a captive insurer which:

(1) Has failed or refused to comply with any provision or requirement of this act;

(2) Is impaired in capital or surplus;

(3) Is insolvent;

(4) Is determined, pursuant to the Standards to Identify Insurance Companies Deemed to be in Hazardous Financial Condition Act of 1993, effective October 21, 1993 (D.C.

Law 10-43; D.C. Official Code § 31-2101 *et seq.*), to be in such condition that further transaction of business by the company will be hazardous to its policyholders, creditors, or the general public;

(5) Has failed or refused to submit any report or statement required by law or order of the Commissioner;

(6) Has failed or refused to comply with any provision of its charter or bylaws;

(7) Has used any method in transacting insurance business pursuant to this act which would be detrimental to the operation of the captive insurer or would make its condition unsound with respect to its policyholders or the general public; or

(8) Has failed otherwise to comply with the laws of the District or any jurisdiction.

(b) The Commissioner may also impose a fine not to exceed $5,000 for each violation by a captive insurer of any of the provisions found in subsection (a) of this section.

Sec. 17. Insolvency.

(a) A captive insurer shall not join or contribute financially to any risk-sharing plan, risk pool, or insurance insolvency guaranty fund in the District. A captive insurer or its insured, its parent or an affiliated company, or any member organization of its association shall not receive any benefit from the plan, pool, or fund for claims arising out of the operations of the captive insurer.

(b) The terms and conditions set forth in the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*), pertaining to insurer rehabilitation, insolvency, and receiverships, shall apply in full to captive insurance companies licensed under this act and shall apply to the segregated accounts of a captive insurer on an account basis. If there is a conflict between the provisions of this act and the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*), the provisions of this act shall prevail.

Sec. 18. Redomestication.

(a) Any captive insurer which is licensed under laws of any jurisdiction may become a domestic captive insurer in the District by complying with all of the requirements of this act relative to the organization and licensing of a domestic insurer of the same type and by designating an office at a place within the District. The redomesticated captive insurer may transact business in the District and shall be subject to the authority and jurisdiction of the District.

(b) All insurance contracts which are in existence at the time any captive insurer transfers its insurance domicile to the District by merger, consolidation, or any other lawful method shall continue in full force and effect upon the transfer if the captive insurer is duly qualified to transact the same type of insurance business in the District.

(c) Every transferring insurer shall notify the Commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to application documents filed or required to be filed with the Commissioner.

(d) Any domestic captive insurer, upon the approval of the Commissioner, may transfer its domicile to any state in which it is licensed to transact business as a captive insurance company and, upon the transfer, shall cease to be a domestic insurer. The Commissioner shall approve any proposed transfer unless he or she determines the transfer is not in the best interest of the policyholders.

Sec. 19. Rating organization.

A captive insurer shall not required to join a rating organization.

Sec. 20. Captive insurance regulatory and supervision trust account.

All fees, fines, penalties, and assessments received by the Commissioner under this act shall be deposited in, and credited to, the account established by section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)), and expended in accordance with section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)).

Sec. 21. Judicial review; mandamus.

(a) Any captive insurer aggrieved by any act, determination, rule, regulation, order, or any other action taken by Commissioner pursuant to this act, and which was the subject of a contested case, may appeal to the District of Columbia Court of Appeals, in accordance with section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

(b) The filing of an appeal pursuant to this section shall not stay the application of any rule, regulation, order, or other action of the Commissioner to the appealing party unless the court, after giving the appealing party notice and an opportunity to be heard, determines that failure to grant the stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(c) Any captive insurer aggrieved by any failure of the Commissioner to act or make a determination required by this act may petition the Superior Court of the District of Columbia for a writ in the nature of a mandamus or a peremptory mandamus directing the Commissioner to act or make such determination forthwith.

Sec. 22. Regulations.

The Commissioner may issue rules and regulations relating to captive insurers as are necessary to enable him or her to carry out the provisions of this act.

Sec. 23. Applicable laws.

Except as provided in this act, no law relating to the insurance industry shall apply to captive insurers other than this act.

Sec. 24. Repeal and transition provisions.

(a) The Captive Insurance Company Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), is repealed, subject to the provisions of this section.

(b) All existing fees set forth in the Captive Insurance Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), shall remain in effect under the corresponding provisions of the Captive Insurance Company Act of 2004, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), and shall be applicable to segregated accounts, unless modified or repealed by rules promulgated by the Commissioner.

(c) All effective certificates of authority and all conditions imposed on the certificates of authority shall apply to the extent they would have applied under prior law.

(d) All captive insurers granted a certificate of authority as sponsored captive insurers under prior law shall comply with all of the provisions found in this act.

Amend § 31-1202

Sec. 25. Section 3 of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1202), is amended by adding a new subsection (b-3) to read as follows:

"(b-3)(1) There is established a separate account within the Insurance Regulatory Trust Fund for the purpose of funding the expenses of the Department of Insurance, Securities, and Banking in the discharge of all of its administrative, regulatory and marketing functions under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834). Except as otherwise provided in section 13(g), all fees, fines, penalties, assessments, and other funds received by the Commissioner under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), and regulations promulgated thereunder, shall be deposited in, and credited to, the account. The Mayor shall be responsible for the deposit and expenditure of these monies as provided by law. At the end of each fiscal year, any funds in the account shall revert to the General Fund of the District of Columbia.

"(2) Captive insurance companies conducting business in the District under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), shall be exempt from the assessments imposed on insurers and health maintenance organizations under section 4.".

Amend § 31-4102

Sec. 26. Section 3(a)(1) of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4102(a)(1)), is amended to read as follows:

"(a)(1) A risk retention group shall be chartered as an association captive insurer licensed pursuant to section 2 of the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), and licensed to write only liability insurance pursuant to this act, and shall comply with all of the laws, rules, and regulations, and requirements applicable to captive insurance companies chartered and licensed in the District and with section 4, to the extent the requirements are not a limitation on laws, rules, regulations, or requirements of the District.".

Sec. 27. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 28. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 30, 2004

AN ACT

D.C. ACT 15-639

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
NOVEMBER 30, 2004

Codification District of Columbia Official Code

2001 Edition

2005 Winter Supp.

West Group Publisher

To authorize, on a temporary basis, the issuance of District of Columbia general obligation tax revenue anticipation notes to finance general governmental expenses for the fiscal year ending September 30, 2005.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2005 Tax Revenue Anticipation Notes Temporary Act of 2004".

Sec. 2. Definitions.

For the purposes of this act, the term:

Note, § 1-204.72

(1) "Additional Notes" means District general obligation revenue anticipation notes described in section 9 that may be issued pursuant to section 472 of the Home Rule Act and that will mature on or before September 30, 2005, on a parity with the notes.

(2) "Authorized delegate" means the City Administrator, the Chief Financial Officer, the Treasurer, or any officer or employee of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(3) "Available funds" means District funds required to be deposited with the Escrow Agent, receipts, and other District funds that are not otherwise legally committed.

(4) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel or co-bond counsel from time to time by the Mayor.

(5) "Chief Financial Officer" means the Chief Financial Officer established pursuant to section 424(a)(1) of the Home Rule Act.

(6) "City Administrator" means the City Administrator established pursuant to section 422(7) of the Home Rule Act.

(7) "Council" means the Council of the District of Columbia.

(8) "District" means the District of Columbia.

(9) "Escrow Agent" means any bank, trust company, or national banking association with requisite trust powers and with an office in the District designated to serve in this capacity by the Mayor.

(10) "Escrow Agreement" means the escrow agreement between the District and the Escrow Agent authorized in section 7.

(11) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Notes" means one or more series of District general obligation revenue anticipation notes authorized to be issued pursuant to this act.

(14) "Receipts" means all funds received by the District from any source, including, but not limited to, taxes, fees, charges, miscellaneous receipts, and any moneys advanced, loaned, or otherwise provided to the District by the United States Treasury, less funds that are pledged to debt or other obligations according to section 9 or that are restricted by law to uses other than payment of principal of, and interest on, the notes.

(16) "Treasurer" means the Treasurer of the District of Columbia established pursuant to section 424(a)(2) of the Home Rule Act.

Sec. 3. Findings.

The Council finds that:

(1) Under section 472 of the Home Rule Act, the Council may authorize, by act, the issuance of general obligation revenue anticipation notes for a fiscal year in anticipation of the collection or receipt of revenues for that fiscal year. Section 472 of the Home Rule Act provides further that the total amount of general obligation revenue anticipation notes issued and outstanding at any time during a fiscal year shall not exceed 20% of the total anticipated revenue of the District for that fiscal year, as certified by the Mayor as of a date not more than 15 days before each original issuance of the notes.

(2) Under section 482 of the Home Rule Act, the full faith and credit of the District is pledged for the payment of the principal of, and interest on, any general obligation revenue anticipation note.

(3) Under section 483 of the Home Rule Act, the Council is required to provide in the annual budget sufficient funds to pay the principal of, and interest on, all general obligation revenue anticipation notes becoming due and payable during that fiscal year, and the Mayor is required to ensure that the principal of, and interest on, all general obligation revenue anticipation notes is paid when due, including by paying the principal and interest from funds not otherwise legally committed.

(4) The Mayor has advised the Council that, based upon the Mayor's projections of anticipated receipts and disbursements during the fiscal year ending September 30, 2005, it may be necessary for the District to borrow a sum not to exceed $350 million, an amount that does not exceed 20% of the total anticipated revenue of the District for such fiscal year, and to accomplish the borrowing by issuing general obligation revenue anticipation notes in one or more series.

(5) The issuance of general obligation revenue anticipation notes in a sum not to exceed $350 million is in the public interest.

Sec. 4. Note authorization.

(a) The District is authorized to incur indebtedness by issuing the notes pursuant to sections 472 and 482 of the Home Rule Act, in one or more series, in a sum not to exceed $350 million, to finance its general governmental expenses, in anticipation of the collection or receipt of revenues for the fiscal year ending September 30, 2005.

(b) The Mayor is authorized to pay from the proceeds of the notes the costs and expenses of issuing and delivering the notes, including, but not limited to, underwriting, legal, accounting, financial advisory, note insurance or other credit enhancement, marketing and selling the notes, and printing costs and expenses.

Sec. 5. Note details.

(a) The notes shall be known as "District of Columbia Fiscal Year 2005 General Obligation Tax Revenue Anticipation Notes" and shall be due and payable, as to both principal and interest, on or before September 30, 2005.

(b) The Mayor is authorized to take any action necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the notes, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the notes, including any redemptions applicable thereto and a determination that the notes may be issued in book entry form;

(2) Provisions for the transfer and exchange of the notes;

(3) The principal amount of the notes to be issued;

(4) The rate or rates of interest or the method of determining the rate or rates of interest on the notes; provided, that the interest rate or rates borne by the notes of any series shall not exceed in the aggregate 10% per year calculated on the basis of a 365-day year (actual days elapsed); provided, further, that if the notes are not paid at maturity, the notes may provide for an interest rate or rates after maturity not to exceed in the aggregate 15% per year calculated on the basis of a 365-day year (actual days elapsed);

(5) The date or dates of issuance, sale, and delivery of the notes;

(6) The place or places of payment of principal of, and interest on, the notes;

(7) The designation of a registrar, if appropriate, for any series of the notes, and the execution and delivery of any necessary agreements relating to the designation;

(8) The designation of paying agent(s) or escrow agent(s) for any series of the notes, and the execution and delivery of any necessary agreements relating to such designations; and

(9) Provisions concerning the replacement of mutilated, lost, stolen or destroyed notes.

(c) The notes shall be executed in the name of the District and on its behalf by the manual signature of the Mayor or an authorized delegate. The official seal of the District or a facsimile of it shall be impressed, printed, or otherwise reproduced on the notes. If a registrar is designated, the registrar shall authenticate each note by manual signature and maintain the books of registration for the payment of the principal of, and interest on, the notes and perform other ministerial responsibilities as specifically provided in its designation as registrar.

(d) The notes may be issued at any time or from time to time in one or more issues and in one or more series.

Sec. 6. Sale of the Notes.

(a) The notes of any series shall be sold at negotiated sale pursuant to a purchase contract or at competitive sale pursuant to a bid form. The notes shall be sold at a price not less than par plus accrued interest from the date of the notes to the date of delivery thereof. The purchase contract or bid form shall contain the terms that the Mayor considers necessary or appropriate to carry out the purposes of this act. The Mayor's execution and delivery of the purchase contract or bid form shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the notes. The Mayor shall deliver the notes, on behalf of the District, to the purchasers upon receiving the purchase price provided in the purchase contract or bid form.

(b) The Mayor or an authorized delegate may execute, in connection with each sale of

the notes, an offering document on behalf of the District, and may authorize the document's distribution in relation to the notes being sold.

(c) The Mayor or an authorized delegate shall take actions and execute and deliver agreements, documents, and instruments (including any amendment of or supplement to any such agreement, document, or instrument) in connection with any series of notes as required by or incidental to:

(1) The issuance of the notes;

(2) The establishment or preservation of the exclusion from gross income for federal income tax purposes of interest on the notes, the treatment of interest on the notes as not constituting an item of tax preference for purposes of the federal alternative minimum tax ("non-AMT"), if the notes are originally issued as non-AMT notes, and the exemption from District income taxation of interest on the notes (except estate, inheritance,and gift taxes);

(3) The performance of any covenant contained in this act, in any purchase contract for the notes, or in any escrow or other agreement for the security thereof;

(4) The provision for securing the repayment of the notes by a letter or line of credit or other form of credit enhancement, and the repayment of advances under any such credit enhancement, including the evidencing of such a repayment obligation with a negotiable instrument with such terms as the Mayor shall determine; or

(5) The execution, delivery, and performance of the Escrow Agreement, a purchase contract, or a bid form for the notes, a paying agent agreement, an agreement relating to credit enhancement, if any, including any amendments of any of these agreements, documents, or instruments.

(d) The notes shall not be issued until the Mayor receives an approving opinion of Bond Counsel as to the validity of the notes and the establishment or preservation of the exclusion from gross income for federal income tax purposes of the interest on the notes and, if the notes are issued as non-AMT notes, the treatment of such interest as not an item of tax preference for purposes of the federal alternative minimum tax, and the exemption from District income taxation of the interest on the notes (except estate, inheritance and gift taxes).

(e) The Mayor shall execute a note issuance certificate evidencing the determinations and other actions taken by the Mayor for each issue or series of the notes issued and shall designate in the note issuance certificate the date of the notes, the series designation, the aggregate principal amount to be issued, the authorized denominations of the notes, the sale price, and the interest rate or rates on the notes. The Mayor shall certify in a separate certificate, not more than 15 days before each original issuance of a series, the total anticipated revenue of the District for the fiscal year ending September 30, 2005, and that the total amount of all general obligation revenue anticipation notes issued and outstanding at any time during the fiscal year will not exceed 20% of the total anticipated revenue of the District for the fiscal year. These certificates shall be delivered at the time of delivery of the Notes and shall be conclusive evidence of the actions taken as stated in the certificates. A copy of each of the certificates shall be filed with the Secretary to the Council not more than 3 days after the delivery of the notes covered by the certificates.

Sec. 7. Payment and security.

(a) The full faith and credit of the District is pledged for the payment of the principal of, and interest on, the notes when due.

(b) The funds for the payment of the notes as described in this act shall be irrevocably deposited with the Escrow Agent pursuant to the Escrow Agreement. The funds shall be used

for the payment of the principal of, and interest on, the notes when due, and shall not be used for other purposes so long as the notes are outstanding and unpaid.

(c) The notes shall be payable from available funds of the District, including, but not limited to, any moneys advanced, loaned or otherwise provided to the District by the United States Treasury, and shall evidence continuing obligations of the District until paid in accordance with their terms.

(d) The Mayor may, without regard to any act or resolution of the Council now existing or adopted after the effective date of this act, designate an Escrow Agent under the Escrow Agreement. The Mayor may execute and deliver the Escrow Agreement, on behalf of the District and in the Mayor's official capacity, containing the terms that the Mayor considers necessary or appropriate to carry out the purposes of this act. A special account entitled "Special Escrow for Payment of District of Columbia Fiscal Year 2005 General Obligation Tax Revenue Anticipation Notes" is created and shall be maintained by the Escrow Agent for the benefit of the owners of the notes as stated in the Escrow Agreement. Funds on deposit, including investment income, under the Escrow Agreement may not be used for any purposes except for payment of the notes or, to the extent permitted by the Home Rule Act, to service any contract or other arrangement permitted under subsections (k) or (l) of this section, and may be invested only as provided in the Escrow Agreement.

(e) Upon the sale and delivery of the notes, the Mayor shall deposit with the Escrow Agent to be held and maintained as provided in the Escrow Agreement all accrued interest and premium, if any, received upon the sale of the notes.

(f)(1) The Mayor shall set aside and deposit with the Escrow Agent funds in accordance with the Escrow Agreement at the time and in the amount as provided in the Escrow Agreement.

(2) If Additional Notes are issued pursuant to section 9(b), and if on the date set forth in the Escrow Agreement, the aggregate amount of principal and interest payable at maturity on the outstanding notes, including any Additional Notes, less all amounts on deposit, including investment income, under the Escrow Agreement exceeds 90% of the actual receipts of District taxes (other than special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act), for the period August 15, 2005, until September 30, 2005, then beginning on the date set forth in the Escrow Agreement, the Mayor shall promptly, upon receipt by the District, set aside and deposit with the Escrow Agent the receipts received by the District after the date set forth in the Escrow Agreement, until the aggregate amount of principal and interest payable on the outstanding notes, including Additional Notes as described above, is less than 90% of actual receipts of District taxes (other than special tax or charges levied pursuant to sction 490 of the Home Rule Act).

(3) The District covenants that it shall levy, maintain, or enact taxes due and payable during August 1, 2005, through September 30, 2005, to provide for payment in full of the principal of, and interest on, the notes when due. The taxes referred to in this paragraph shall be separate from special taxes or charges levied pursuant to section 481(a), or taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(4) The District covenants that so long as any of the notes are outstanding, it shall not grant, create, or permit the existence of any lien, pledge, or security interest with respect to its taxes due and payable during the period August 1, 2005, through September 30, 2005, or commit or agree to set aside and apply those tax receipts to the payment of any obligation of the District other than the notes. The taxes referred to in this paragraph shall not include special taxes or charges levied pursuant to section 481(a), or taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act, or any real property tax liens created or arising in any fiscal

year preceding the issuance of the notes.

(g) Before the 16th day of each month, beginning in August 2005, the Mayor shall review the current monthly cash flow projections of the District, and if the Mayor determines that the aggregate amount of principal and interest payable at maturity on the notes then outstanding, less any amounts and investment income on deposit under the Escrow Agreement, equals or exceeds 85% of the receipts estimated by the Mayor to be received after such date by the District but before the maturity of the notes, then the Mayor shall promptly, upon receipt by the District, set aside and deposit with the Escrow Agent the receipts received by the District on and after that date until the aggregate amount, including investment income, on deposit with the Escrow Agent equals or exceeds 100% of the aggregate amount of principal of, and interest on, the notes payable at their maturity.

(h) The Mayor shall, in the full exercise of the authority granted the Mayor under the Home Rule Act and under any other law, take actions as may be necessary or appropriate to ensure that the principal of, and interest on, the notes are paid when due, including, but not limited to, seeking an advance or loan of moneys from the United States Treasury if available under then-current law. This action shall include, without limitation, the deposit of available funds with the Escrow Agent as may be required under section 483 of the Home Rule Act, this act, and the Escrow Agreement. Without limiting any obligations under this act or the Escrow Agreement, the Mayor reserves the right to deposit available funds with the Escrow Agent at his or her discretion.

(i) There are provided and approved for expenditure sums as may be necessary for making payments of the principal of, and interest on, the notes, and the provisions of the District of Columbia Appropriations Act, 2005, if enacted prior to the effective date of this act, relating to short-term borrowings are amended and supplemented accordingly by this section, as contemplated in section 483 of the Home Rule Act.

(j) The notes shall be payable, as to both principal and interest, in lawful money of the United States of America in immediately available or same-day funds at a bank or trust company acting as paying agent, located in the District, and at not more than 2 co-paying agents that may be located outside the District, one of which shall be located in New York, New York. All of the paying agents shall be qualified to act as paying agents under the laws of the United States of America, of the District, or of the state in which they are located, and shall be designated by the Mayor without regard to any other act or resolution of the Council now existing or adopted after the effective date of this act.

(k) In addition to the security available for the holders of the notes, the Mayor is hereby authorized to enter into agreements, including any agreement calling for payments in excess of $1 million during fiscal year 2005, with a bank or other financial institution to provide a letter of credit, line of credit, or other form of credit enhancement to secure repayment of the notes when due. The obligation of the District to reimburse said bank or financial institution for any advances made under any such credit enhancement shall be a general obligation of the District until repaid and shall accrue interest at the rate of interest established by the Mayor not in excess of 15% per year until paid.

(l) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and the Financial Institutions Deposit and Investment Amendment Act of 1997, effective March 18, 1998 (D.C. Law 12-56; D.C. Official Code § 47-351.01 *et seq.*), shall not apply to any contract which the Mayor may from time to time determine to be necessary or appropriate to place, in whole or in part:

(1) An investment or obligation of the District as represented by the notes;

(2) An investment or obligation or program of investment; or

(3)(A) A contract or contracts based on the interest rate, currency, cash flow, or other basis as the Mayor may desire, including, without limitation, interest rate swap agreements; currency swap agreements; insurance agreements; forward payment conversion agreements; futures; contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates or stock or other indices; contracts to exchange cash flows or a series of payments; and contracts to hedge payment, currency, rate, spread or similar exposure, including, without limitation, interest rate floors, or caps, options, puts, and calls.

(B) The contracts or other arrangements also may be entered into by the District in connection with, or incidental to, entering into or maintaining any agreement that secures the notes. The contracts or other arrangements shall contain whatever payment, security, terms, and conditions as the Mayor may consider appropriate and shall be entered into with whatever party or parties the Mayor may select, after giving due consideration, where applicable, to the creditworthiness of the counterparty or counterparties, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. In connection with, or incidental to, the issuance or holding of the notes, or entering into any contract or other arrangement referred to in this section, the District may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and any other terms and conditions as the Mayor determines. Proceeds of the notes and any money set aside for payment of the notes or of any contract or other arrangement entered into pursuant to this section may be used to service any contract or other arrangement entered into pursuant to this section.

Sec. 8. Defeasance.

(a) The notes shall no longer be considered outstanding and unpaid for the purpose of this act and the Escrow Agreement, and the requirements of this act and the Escrow Agreement shall be deemed discharged with respect to the notes, if the Mayor:

(1) Deposits with an Escrow Agent, herein referred to as the "defeasance escrow agent," in a separate defeasance escrow account, established and maintained by the Escrow Agent solely at the expense of the District and held in trust for the note owners, sufficient moneys or direct obligations of the United States, the principal of, and interest on, which, when due and payable, will provide sufficient moneys to pay when due the principal of, and interest payable at maturity on, all the notes; and

(2) Delivers to the defeasance escrow agent an irrevocable letter of instruction to apply the moneys or proceeds of the investments to the payment of the notes at their maturity.

(b) The defeasance escrow agent shall not invest the defeasance escrow account in any investment callable at the option of its issuer if the call could result in less than sufficient moneys being available for the purposes required by this section.

(c) The moneys and direct obligations referred to in subsection (a)(1) of this section may include moneys or direct obligations of the United States of America held under the Escrow Agreement and transferred, at the written direction of the Mayor, to the defeasance escrow account.

(d) The defeasance escrow account specified in subsection (a) of this section may be established and maintained without regard to any limitations placed on these accounts by any act or resolution of the Council now existing or adopted after this act becomes effective, except for this act.

Sec. 9. Additional debt and other obligations.

(a) The District reserves the right at any time to: borrow money or enter into other obligations to the full extent permitted by law; secure the borrowings or obligations by the pledge of its full faith and credit; secure the borrowings or obligations by any other security and pledges of funds as may be authorized by law; and issue bonds, notes, including Additional Notes, or other instruments to evidence the borrowings or obligations. The reserved right with regard to notes and Additional Notes issued pursuant to sections 471, 472, and 490 of the Home Rule Act shall be subject to this act. No borrowings or other obligations, including Additional Notes, shall be entered into that would require an immediate set-aside and deposit under section 7(g) applied as of the date of the issuance.

(b)(1) The District may issue Additional Notes pursuant to section 472 of the Home Rule Act that shall mature on or before September 30, 2005, and the District shall covenant to set aside and deposit under the Escrow Agreement, receipts and other available funds for payment of the principal of, and the interest on, the Additional Notes on a parity basis with the notes.

(2) The receipts and available funds referred to in subsection (a) of this section shall be separate from the special taxes or charges levied pursuant to section 481(a), and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(3) Any covenants relating to any Additional Notes shall have equal standing and be on a parity with the covenants made for payment of the principal of, and the interest on, the notes.

(4) If Additional Notes are issued, the provisions of section 7 hereof shall apply to both the notes and the Additional Notes and increase the amounts required to be set aside and deposited with the Escrow Agent.

(5) As a condition precedent to the issuance of any Additional Notes, the Mayor or the authorized delegate shall deliver a signed certificate certifying that the District is in full compliance with all covenants and obligations under this act and the Escrow Agreement, that no set-aside and deposit of receipts pursuant to section 7(g) applied as of the date of issuance is required, and that no set-aside and deposit will be required under section 7(g) applied immediately after the issuance.

(c) Any general obligation notes issued by the District pursuant to section 471 of the Home Rule Act shall not be scheduled to be due and payable until after the earlier of the following:

(1) The stated maturity date of all outstanding notes and Additional Notes; or

(2) The date an amount sufficient to pay all principal and interest payable at maturity on the notes and the Additional Notes is on deposit with the Escrow Agent.

(d) Revenue notes of the District, which are payable from specified District revenue that is set aside for the payment of the revenue notes and that is included in the amount of receipts estimated by the Mayor, pursuant to section 7(g), to be received after the proposed date of issue of the revenue notes and before the maturity of the notes, shall not be issued if a set-aside and deposit of receipts pursuant to section 7(g) applied as of the proposed date of the issuance of revenue notes would be required. In determining, for purposes of this subsection, whether a set aside and deposit would be required, there shall be excluded from receipts estimated by the Mayor to be received after the proposed date of issuance of revenue notes and before the maturity of the notes an amount equal to the estimated revenues set aside for the payment of revenue notes.

Sec. 10. Tax matters.

The Mayor shall not (1) take any action or omit to take any action, or (2) invest, reinvest, or accumulate any moneys in a manner, that will cause the interest on the notes to be includable in gross income for federal income tax purposes or, if the notes were issued as non-AMT notes, to be treated as an item of tax preference for purposes of the federal alternative minimum tax. The Mayor also shall take all actions necessary to be taken so that the interest on the notes will not be includable in gross income for federal income tax purposes or, if the notes were issued as non-AMT notes, be treated as an item of tax preference for purposes of the federal alternative minimum tax.

Sec. 11. Contract.

This act shall constitute a contract between the District and the owners of the notes. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

Sec. 12. District officials.

(a) The elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the notes or be subject to any personal liability by reason of the issuance of the notes.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the notes shall be valid and sufficient for all purposes, notwithstanding the fact that the official ceases to be that official before delivery of the notes.

Sec. 13. Authorized delegation of authority.

To the extent permitted by the District and federal laws, the Mayor may delegate to any authorized delegate the performance of any act authorized to be performed by the Mayor under this act.

Sec. 14. Maintenance of documents.

Copies of the notes and related documents shall be filed in the Office of the Secretary.

Sec. 15. Information reporting.

(a) Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the notes, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

(b) The Mayor shall notify the Council within 30 days of any action taken under section 7(g).

Sec. 16. Fiscal impact statement.

The Office of the Chief Financial Officer estimates that the fiscal impact of issuing these Tax Revenue Anticipation Notes is as follows:

(1) The debt service expense associated with issuing Tax Revenue Anticipation Notes to fund Fiscal Year 2005 seasonal cash needs in the amount of approximately $250 million is incorporated in the District's proposed Fiscal Year 2005 budget. This act has a not-to-exceed amount of $350 million, as a contingency in the event that the District's actual Fiscal Year 2005 seasonal cash needs exceed the projected cash needs at the time of budget preparation. In that event, the Office of the Chief Financial Officer plans to manage its total

debt service expenditures in a manner that keeps such expenditures from exceeding the total debt service budget. As such, there is no additional fiscal impact associated with the passage of this act or the issuance of the notes.

(2) The fiscal impact associated with not passing this act could be an inability of the District to meet numerous operating expenditures during Fiscal Year 2005.

Sec. 17. Effective date.

(a) This act shall take effect upon enactment as provided in section 472(d)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 806; D.C. Official Code § 1-204.72(d)(1)).

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 30, 2004

ENROLLED ORIGINAL

AN ACT

D.C. ACT 15-640

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 30, 2004

Codification District of Columbia Official Code

2001 Edition

2005 Winter Supp.

West Group Publisher

To enact, on an emergency basis, a new captive insurance company act to permit the chartering and operation of captive insurance companies in the District of Columbia; to provide for the licensing and regulation of captive insurers; to authorize the creation of segregated accounts; to establish minimum amounts of capital and surplus that must be maintained by a captive insurer; to establish the investments that captive insurers are permitted to make, governing reinsurance transactions; to provide for a premium tax; to establish minimum requirements for transacting business; to require the filing of an annual financial report; to authorize the Commissioner of the Department of Insurance, Securities, and Banking to perform financial examinations; to grant enforcement authority governing insolvency proceedings and redomestications of captive insurers; to exempt licensed captive insurers from certain taxes; to authorize the Commissioner to adopt regulations; to repeal the Captive Insurance Company Act of 2000 and to provide transition provisions; to amend the Insurance Regulatory Trust Fund Act of 1993 to establish an account within the Insurance Regulatory Trust Fund for the purpose of funding the expenses of the captive insurance activities of the Department in the discharge of all of its administrative, regulatory, and marketing functions under this act; and to amend the Risk Retention Act of 1993 to provide that a risk retention group shall be chartered as an association captive insurer and shall be subject to this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Captive Insurance Company Emergency Act of 2004".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Affiliated company" means a company in the same corporate system as its parent or a member organization by virtue of common ownership, control, operation, or management.

(2) "Agency captive insurer" means a captive insurer that is owned by an insurance agency or brokerage and that only insures risks of policies that are placed by or through the agency or brokerage.

(3) "Alien captive insurer" means any non-U.S. insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a foreign country that imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in the jurisdiction.

(4) "Association" means a legal entity consisting of 2 or more individuals, corporations, partnerships, associations, or other forms of business organization.

(5) "Association captive insurer" means a captive insurer that only insures risks of the member organizations of an association and the affiliated companies of those members, including groups formed pursuant to the Product Liability Risk Retention Act of 1981, approved September 25, 1981 (95 Stat. 949; 15 U.S.C. § 3901 *et seq.*), and the employee benefit plans or trusts of such organizations or companies.

(6) "Branch business" means any insurance business transacted by a branch captive insurance company in the District.

(7) "Branch captive insurer" means any alien captive insurer licensed by the Commissioner to transact the business of insurance in the District through a business unit with a principal place of business in the District.

(8) "Branch operations" means any business operations of a branch captive insurer in the District.

(9) "Captive insurer" means any insurer that insures the risks of its parent or affiliated companies of its parent, any member organizations of an association and the affiliated companies of the member organizations, or any other policyholders or participants that have entered into a contractual relationship with the insurer for the purchase of insurance, including any pure captive insurer, association captive insurer, agency captive insurer, segregated account captive insurer, and rental captive insurer licensed pursuant to this act.

(10) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.

(11) "Common ownership and control" means:

(A) In the case of a stock insurer, the direct or indirect ownership of 51% or more of the voting stock of 2 or more corporations by the same member or members; and

(B) In the case of a mutual insurer, the direct or indirect ownership of 51% or more of the surplus and the voting power of 2 or more corporations by the same member or members.

(12) "Department" means the Department of Insurance, Securities, and Banking.

(13) "Excess workers' compensation insurance" means insurance in excess of the specified per-incident or aggregate limit, if any, established by:

(A) The Commissioner, if the insurance is being transacted in the District; or

(B) The chief regulatory officer for insurance in the jurisdiction in which the insurance is being transacted.

(14) "Member organization" means any individual, corporation, partnership, association, or other form of business organization that belongs to an association.

(15) "Mutual insurer" means an incorporated insurer without any issued and outstanding stock whose capital and surplus are owned by its policyholders.

(16) "Net direct premiums" means the direct premiums collected or contracted for on policies or contracts of insurance written by a captive insurer during the preceding calendar year, less the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(17) "Parent" means a corporation, partnership, association, or other form of business organization that directly or indirectly owns, controls, or holds power to vote more than 51% or more of the outstanding voting securities of a pure captive insurer.

(18) "Participant" means any individual or organization, and any affiliates thereof, that are insured by a segregated account captive insurer if the losses of the person are limited through a participant contract to the assets of a segregated account.

(19) "Participant contract" means a contract by which a segregated account captive insurer insures the risks of a participant and limits the losses of the participant to the assets of the segregated account.

(20) "Person" means any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, an association, joint stock company, trust, unincorporated organization, similar entity, or any combination of the foregoing.

(21) "Provisional certificate of authority" means a certificate of authority issued to a captive insurer that authorizes the captive insurer to engage in limited activities authorized by the Commissioner.

(22) "Pure captive insurer" means a captive insurer that only insures or reinsures risks of its parent and affiliated companies or controlled unaffiliated business. The parent of a pure captive insurer includes an employee benefit plan or trust.

(23) "Reciprocal insurer" includes an interinsurance exchange or a risk retention group as defined in section 2(12) of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4101(12)).

(24) "Redomestication" means the transfer to the District of the insurance domicile of an authorized foreign or alien insurance company.

(25) "Rental captive insurer" means a captive insurer formed to enter into contractual agreements with policyholders or associations to offer some or all of the benefits of a program of captive insurance and that only insures risks of the policyholders or associations.

(26) "Segregated account" means a separate account established and maintained by any captive insurer:

(A) In which the minimum capital and surplus required by applicable law is provided by one or more persons;

(B) That is formed or licensed under the provisions of this act;

(C) That insures risks of separate participants through contract;

(D) That is comprised of one or more participants who are authorized to act on matters relating to the segregated account; and

(E) That segregates each participant's liability through one or more segregate accounts.

(27) "Stock insurer" means an incorporated insurer with issued and outstanding stock whose capital and surplus is owned by its stockholders.

Sec. 3. Authority to do business; prohibited activities.

(a) A captive insurer may be organized and operated in any form of business organization authorized by the Commissioner and may, pursuant to this act, transact any insurance or annuity business.

(b) Notwithstanding subsection (a) of this section, a captive insurer shall not:

(1) Directly provide personal motor vehicle or homeowners' insurance coverage, or any component thereof;

(2) Accept or cede reinsurance, except as otherwise provided in section 8;

(3) Insure any risks other than those of its parent and affiliated companies if it is a pure captive insurer;

(4) Insure any risks other than those of the member organizations of its association and the affiliated companies of the member organizations if it is an association captive insurer;

(5) Insure any risks other than those of the policies that are placed by or through the insurance agency or brokerage that owns the captive insurer if it is an agency captive insurer;

(6) Insure any risks other than those of the policyholders or associations that have entered into agreements with the rental captive insurer for the insurance of those risks if it is a rental captive insurer, and shall use a form approved by the Commissioner for these agreements;

(7) Provide excess workers' compensation insurance to its parent and affiliated companies if the transaction is prohibited by the laws of the state in which the insurance is transacted;

(8) Reinsure workers' compensation insurance provided pursuant to a program of self-funded insurance of its parent and affiliated companies unless:

(A) The parent or affiliated company which is providing the self-funded insurance is certified as a self-insured employer by the Commissioner, if the insurance is being transacted in the District; or

(B) The program of self-funded insurance is otherwise qualified pursuant to, or in compliance with, the laws of the state in which the insurance is transacted; or

(9) Write insurance or reinsurance for employee benefits that are subject to the provisions of the provisions of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 832; 29 U.S.C. § 1001 *et seq.*), for any entity except its parent and affiliated companies.

(c) Notwithstanding subsections (a) and (b) of this section, the Commissioner may authorize a captive insurer that is otherwise qualified to conduct business in the District to engage in any activity in any form permitted by a captive insurer in any other jurisdiction.

(d) A captive insurer shall file with the Commissioner a written request to engage in any activity under subsection (c) of this section. The Commissioner shall approve the request within 30 days after receiving the request, unless the Commissioner determines that the activity will be harmful to the captive insurer's policyholders.

(e) For the purposes of this act, a branch captive insurer shall be deemed to be a pure captive insurer with respect to operations in the District, unless otherwise permitted by the Commissioner.

Sec. 4. Organizational requirements for transacting business; incorporation.

(a) A captive insurer may be organized in the District in any form of authorized by the Commissioner.

(b) The articles of incorporation or organizational documents of a captive insurer shall satisfy the following minimum requirements:

(1) The capital stock of a captive insurer incorporated as a stock insurer shall be issued at not less than par value;

(2) The captive insurer shall not have less than 2 incorporators or organizers;

(3) The articles of association, articles of incorporation, articles of organization, charter, or bylaws of a captive insurer shall require a quorum of the board of directors that consists of more than 1/3 of the number of directors prescribed by the articles of association, articles of incorporation, articles of organization (or equivalent organizational document), charter, or bylaws; and

(4) Any additional provisions that the Commissioner considers necessary.

(c) The Commissioner may, at the request of the captive insurer, issue a certificate of good standing and charge a fee for each certificate in an amount to be established by the Commissioner.

(d) An attorney-in-fact of a reciprocal captive insurer may be organized in the District in any form of business, including as an individual, authorized by the Commissioner.

(e) A captive insurer organized in the District shall have the privileges of, and shall be subject to, the provisions of general corporation law set forth in the District of Columbia Business Corporation Act, effective September 10, 1992 (D.C. Law 9-144; D.C. Official Code § 29-101.01 *et seq.*), the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 265; D.C. Official Code § 29-301.01 *et seq.*), and the Limited Liability Company Act of 1994, effective July 23, 1994 (D.C. Law 10-138; D.C. Official Code § 29-1001 *et seq.*), and the applicable provisions contained in this act. If the provisions of this act conflict with the general provisions of the acts codified in Title 29 of the District of Columbia Official Code, the provisions of this act shall control.

(f) The Commissioner may regulate the manager of a captive insurer.

Sec. 5. Segregated accounts.

(a) A captive insurer may form one or more segregated accounts to insure risks of one or more participants.

(b) A captive insurer that maintains a segregated account shall, at the time of paying the annual fee, pay an additional annual fee in an amount to be established by the Commissioner for each segregated account.

(c) A captive insurer may create one or more segregated accounts to segregate its assets and liabilities from the assets and liabilities of its segregated accounts. The assets and liabilities of each segregated account shall be held separately from the assets and liabilities of all other segregated accounts.

(d) A captive insurer shall be a single legal entity and each segregated account of or within a captive insurer may be established as a separate legal entity, which shall constitute a legal entity separate from the captive insurer. Each segregated account shall be separately identified or designated as being a part of the captive insurer.

(e) A captive insurer may create and issue shares in one or more classes or series for one or more segregated accounts. The proceeds of the issue shall be included in the assets of the segregated account that issued the shares.

(f) The proceeds of the issue of shares, other than segregated account shares, shall be included in the captive insurer's general assets.

(g) A captive insurer may pay a dividend on segregated account shares of any class or series whether or not a dividend is declared on any other class or series of segregated account shares, or any other shares.

(h) Segregated account dividends may be paid on the segregated account shares from the segregated account assets. The dividends shall only be paid to the shareholders of the segregated account from which the segregated account shares were issued and otherwise in accordance with the rights of the shares.

(i) Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement which is to be binding on or to inure to the benefit of a segregated

account or accounts shall be executed by the captive insurer for and on behalf of such segregated account or accounts, shall be identified, and, if in writing, shall indicate that the execution is in the name of, or by or for the account of, the segregated account or accounts.

(j) If a captive insurer is in breach of subsection (i) of this section:

(1) The directors of the captive insurer shall, notwithstanding any provisions to the contrary in the captive insurer's organizational documents or in any contract with the company or otherwise, incur personal liability for the liabilities of the captive insurer and the segregated account under this act, matter, deed, agreement, contract, instrument, or arrangement that was executed; and

(2) Unless they were fraudulent, reckless, negligent, or acted in bad faith, the directors of the captive insurer shall have a right of indemnity:

(A) In the case of a matter on behalf of or attributable to a segregated account or accounts; against the assets of that account or accounts.

(B) In the case of a matter not on behalf of or attributable to any segregated account or accounts, against the general assets of the captive insurer.

(k) Notwithstanding the provisions of subsection (j)(1) of this section, a court may relieve a director of all or part of this personal liability thereunder if he or she satisfies the court that he or she should be relieved because:

(1) The director was not aware of the circumstances giving rise to the liability and, in being not so aware, the director was not fraudulent, reckless, or negligent, and did not act in bad faith; or

(2) The director expressly objected, and exercised his or her rights as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to the liability.

(l) If , pursuant to the provisions of subsection (k) of this section, the court relieves a director of all or part of his or her personal liability under subsection (j)(1) of this section, the court may order that the liability in question shall instead be met from such of the segregated account or general assets of the account of the captive insurer as may be specified in the order.

(m) Any provision in the organizational documents of a captive insurer, or any other contractual provision under which the captive insurer may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection (j)(2) of this section, shall be void.

(n) The assets of a captive insurer shall be either segregated account assets or general assets. The segregated account assets shall comprise the assets of the captive insurer held within or on behalf of the segregated accounts of the captive insurer. The general assets of a captive insurer shall comprise the assets of the captive insurer which are not segregated account assets.

(o) The assets of a segregated account are comprised of assets representing the capital stock and reserves attributable to the segregated account or all other assets attributable to or held

within the segregated account. For the purposes of this subsection, "reserves" includes retained earnings, capital surplus, and paid-in capital.

(p) The directors of a captive insurer shall establish and maintain, or cause to be established and maintained, procedures:

(1) To segregate, and keep segregated, account assets separate and separately identifiable from general assets;

(2) To segregate, and keep segregated, account assets of each segregated account separate and separately identifiable from segregated account assets of any other segregated account; and

(3) If relevant, to apportion or transfer assets and liabilities between segregated accounts, or between segregated accounts and general assets, of the segregated account captive insurer.

(q) Segregated account assets shall:

(1) Only be available and used to meet liabilities of the creditors with respect to that segregated account, and those creditors shall thereby be entitled to have recourse to the segregated account assets attributable to that segregated account; and

(2) Not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the captive insurer who are not creditors with respect to a particular segregated account, and those creditors shall not be entitled to have recourse to the protected segregated account assets.

(r) If a liability of a captive insurer to a person arises from a matter, or is otherwise imposed, with respect to a particular segregated account, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to:

(1) First, the segregated account assets attributable to the segregated account; and

(2) Second, the captive insurer's general assets, to the extent that the segregated account assets attributable to the segregated account, are insufficient to satisfy the liability, and to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this act.

(s) If a liability of a captive insurer to a person arises otherwise than from a matter in respect of a particular segregated account or accounts, or is imposed otherwise than in respect of a particular segregated account or accounts, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to the captive insurer's general assets.

(t) Liabilities of a captive insurer not attributable to any of its segregated accounts shall be discharged from the account captive insurer's general assets. Income, receipts, and other property or rights of or acquired by a captive insurer not otherwise attributable to any segregated account shall be attributed to the captive insurer's general assets to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this act.

(u)(1) Each segregated account shall be accounted for separately on the books and records of the captive insurer to reflect the financial condition and results of operations of the segregated account, including net income or loss, dividends, or other distributions to participants, and such other factors as may be provided by the participant contract or required by the Commissioner.

(2) No sale, exchange, or other transfer of assets shall be made by the captive insurer between or among any of its segregated accounts without the written consent of the segregated accounts and the Commissioner.

(3) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a segregated account to any person without the Commissioner's prior written approval and the approval shall not be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment with respect to the segregated account.

(4) Each segregated account captive insurer shall annually file with the Commissioner such financial reports as the Commissioner shall require, which shall include financial statements detailing the financial experience of each segregated account.

(5) Each captive insurer shall notify the Commissioner within 10 business days of any segregated account that is insolvent or otherwise unable to meet its claims or expense obligations.

(6) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new segregated account or the withdrawal of any participant from any existing segregated account shall constitute a change in the strategic business plan of that segregated account requiring the Commissioner's prior written approval.

(v) Any person or legal entity may be a participant in a segregated account formed or licensed under this act.

(w) A participant in a segregated account need not be a shareholder insured within the segregated account or by the captive insurer or any affiliate thereof.

Sec. 6. Liquidation and rehabilitation of segregated accounts.

(a) Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a captive insurer, the liquidator:

(1) Shall deal with the company's assets only in accordance with the procedures set forth in subsection (c)(6) of this section; and

(2) In the discharge of the claims of creditors of the captive insurer, shall apply the captive insurer's assets to those entitled to have recourse thereto under the provisions of section 5.

(b)(1) A petition for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer may be made by:

(A) The segregated account captive insurer;

(B) The majority of the directors of the segregated account captive insurer;

(C) Any creditor of the segregated account; or

(D) The Commissioner.

(2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer shall be served upon:

(A) The captive insurer;

(B) The Commissioner; and

(C) Such other persons as the court may direct.

(c)(1) Subject to the provisions of this section, the court may make a liquidation or rehabilitation order with respect to a segregated account if, in relation to a captive insurer, the court is satisfied that the:

(A) Segregated account assets attributable to a particular segregated account of the captive insurer, and in those cases where creditors of the captive insurer with respect to that segregated account are entitled to have recourse to the captive insurer's general assets, are or are likely to be insufficient to discharge the claims of creditors with respect to that segregated account; and

(B) Making of an order under this section would achieve the purposes set forth in paragraph (3) of this subsection.

(2) A liquidation or rehabilitation order may be made with respect to one or more segregated accounts.

(3) A liquidation or rehabilitation order shall direct that the business and segregated account assets of, or attributable to, a segregated account shall be managed by a liquidator or rehabilitator specified in the order for the purpose of:

(A) The orderly closing or rehabilitation of the business of, or attributable to, the segregated account; and

(B) The distribution of the segregated account assets, or assets attributable to the segregated account, to those having recourse thereto.

(d) The liquidator or rehabilitator of a segregated account:

(1) Shall have all the functions and powers of the directors responsible for the business and segregated account assets of, or attributable to, the segregated account;

(2) May at any time apply to the court for directions as to the extent or exercise of any function or power, for the liquidation or rehabilitation order to be discharged or varied, or for an order as to any matter occurring during the course of the liquidation or rehabilitation; and

(3) In exercising his functions and powers, shall be deemed to act as the agent of the captive insurer and shall not incur personal liability except to the extent that he acts fraudulently, recklessly, negligently, or in bad faith.

(e) Upon the filing of a petition for, and during the period of operation of, a liquidation or rehabilitation order:

(1) No proceedings shall be instituted or continued by or against the captive insurer or segregated account in respect of which the liquidation or rehabilitation order was made; and

(2) No steps shall be taken to enforce any security or in the execution of legal process in respect of the business or segregated account assets of or attributable to the segregated account in respect of which the liquidation or rehabilitation order was made, except by leave of the court.

(f)(1) During the period of operation of a liquidation or rehabilitation order:

(A) The functions and powers of the directors shall cease with respect to the business of, or attributable to, the segregated account or segregated account assets for which the order was made; and

(B) The liquidator or rehabilitator of the segregated account shall be entitled to be present at all meetings of the captive insurer or segregated account and to vote at such meetings as if he or she were a director of the captive insurer.

(2) Unless there are no creditors that are entitled to have recourse to the captive insurer's general assets, the liquidator's or rehabilitator's voting authority includes matters concerning the captive insurer's general assets.

(g)(1) The Court shall not discharge a liquidation or rehabilitation order issued pursuant to this section unless it appears to the Court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved.

(2) The Court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order or adjourn the proceeding.

(3) Upon the Court issuing an order discharging a liquidation or rehabilitation order for a segregated account on the ground that the purpose for which the order was made had been achieved or substantially achieved, the Court may direct that any payment made by the liquidator or rehabilitator to any creditor of the captive insurer, with respect to that segregated account, shall be full satisfaction of the liabilities of the captive insurer to that creditor with respect to that segregated account, and the creditor's claims against the captive insurer with respect to that segregated account shall be thereby extinguished.

Sec. 7. Capital and surplus.

(a) In addition to any other capital required to be maintained pursuant to subsection (c) of this section, a captive insurer, authorized to do business in the District, shall at all times maintain a minimum unimpaired capital of $100,000.

(b) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the capital required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(c) The Commissioner may require a captive insurer, including each segregated account, to maintain additional unimpaired capital based on the type, volume, and nature of the insurance

business that is transacted by the captive insurer and may determine the amount of capital, if any, that may be in the form of an irrevocable letter of credit.

(d) A letter of credit used by a captive insurer or segregated account as evidence of capital required pursuant to this section shall:

(1) Be issued by a bank chartered in the District or by a branch of a bank located in the District if such bank is a member of the United States Federal Reserve System, or its deposits are insured by the Federal Deposit Insurance Corporation;

(2) Be issued on a form approved by the Commissioner; and

(3) Include a provision pursuant to which a letter of credit is automatically renewed each year.

(e) The Commissioner may approve an ongoing plan for the payment of dividends or other distributions by a captive insurer or segregated account if, at the time of each payment or distribution, the amount of capital and surplus retained by the captive insurer or segregated account is in excess of the amounts required by the Commissioner. The Commissioner shall adopt by rule:

(1) A specific amount that a captive insurer or segregated account must have in excess capital and surplus for the approval of an ongoing plan for the payment of dividends or other distributions; or

(2) A formula pursuant to which the specific amount of required excess capital and surplus may be calculated.

(f) A captive insurer shall not be issued a certificate of authority, and shall not hold a certificate of authority, unless the captive insurer has and maintains, in addition to any other surplus required to be maintained pursuant to subsection (h) of this section, an unencumbered surplus of:

(1) For a pure captive insurer, not less than $150,000;

(2) For an association captive insurer incorporated as a stock insurer, not less than $300,000;

(3) For an agency captive insurer, not less than $300,000;

(4) For a rental captive insurer, not less than $300,000;

(5) For an association captive insurer incorporated as a mutual insurer or reciprocal insurer, not less than $500,000; and

(6) For each segregated account, not less than an amount to be established by the Commissioner.

(g) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the surplus required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(h) The Commissioner may prescribe additional requirements relating to surplus based on the type, volume, and nature of the insurance business that is transacted by a captive insurer

or segregated account and requirements regarding which surplus, if any, may be in the form of an irrevocable letter of credit.

(i) A letter of credit used by a captive insurer or a segregated account as evidence of surplus required pursuant to this section shall meet the same requirements as a letter of credit issued for paid-in capital found subsection (d) of this section.

(j) The parent of a branch captive insurer shall be subject to the jurisdiction of the United States District Court for the District of Columbia for all matters involving the branch captive insurer.

(k) Except as otherwise provided in this section, a captive insurer or segregated account shall pay dividends out of, or make any other distribution from, its capital or surplus, or both, in accordance with the provisions set forth in subsection (e) of this section. A captive insurer or segregated account shall not pay dividends out of, or make any other distribution out of, its capital or surplus or both, in violation of this section unless the captive insurer or segregated account has obtained the prior written approval of the Commissioner to make the a payment or distribution.

Sec. 8. Investments.

(a) A captive insurer shall file with the Commissioner a schedule of its proposed investments, and any material changes thereto, which the Commissioner may approve if he or she determines that the investments do not threaten the solvency or liquidity of the captive insurer. The Commissioner shall not unreasonably disapprove the investments.

(b) A captive insurer or segregated account may make a loan to its parent or affiliated company if the loan:

(1) Is first approved in writing by the Commissioner;

(2) Is evidenced by a note that is in a form that is approved by the Commissioner; and

(3) Does not include any money that has been set aside as capital or surplus as required by section 7(a) or (f).

Sec. 9. Reinsurance.

(a) A captive insurer or segregated account may provide reinsurance on risks ceded by any other insurer, captive insurer, or segregated account.

(b) A captive insurer or segregated account may take credit for the reinsurance of risks or portions of risks ceded to reinsurers in compliance with the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*). Prior approval of the Commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official

Code § 31-501 *et seq.*), except for business written by an alien captive insurer outside of the United States.

(c) In addition to reinsurers authorized under the provisions of the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*), a captive insurer or segregated account may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer which has been authorized by the Commissioner. The Commissioner may require any other documents, financial information, or other evidence that the pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in the Commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurer or segregated account and for the protection and consequent benefit of the public at large.

(d) For all purposes of this act, insurance written by a captive insurer or segregated account of any workers' compensation qualified self-insured plan of its parent or affiliates shall be deemed to be reinsurance.

Sec. 10. Application requirements.

(a) A captive insurer shall apply to the Commissioner for a certificate of authority. If one or more segregated accounts are established as separate legal entities, each segregated account shall apply for a certificate of authority. The application shall include:

(1) A proposed copy of the organizational documents of the captive insurer if the captive insurer has not been organized, or a certified copy of the organizational documents and evidence of good standing if the captive insurer has been organized;

(2) A pro forma financial statement for the captive insurer that has been prepared by a certified public accountant; and

(3) Any other statements or documents that the Commissioner requires to be filed with the application.

(b) A captive insurer shall include in its application for a certificate of authority evidence of:

(1) The amount of liquidity of its assets relative to the risks to be assumed by the captive insurer;

(2) The expertise, experience, and character of the persons who will manage the captive insurer;

(3) The overall soundness of the plan of operation of the captive insurer;

(4) The adequacy of the programs that the captive insurer is providing for loss prevention by its parent or member organizations, as applicable;

(5) Minimum capital and surplus requirements as set forth in section 6(a) and (f); and

(6) Such other information considered to be relevant by the Commissioner in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.

(c) An application by a captive insurer or segregated account for a certificate of authority shall include a nonrefundable application fee to be determined by the Commissioner. The Commissioner may require the applicant to retain independent legal, financial, and examination services from outside the Department to review and make recommendations regarding the applicant's qualifications, and to submit those reports and recommendations to the Commissioner for his or her review. The cost of those services shall be paid by the applicant.

(d) If the Commissioner determines that the documents and statements filed by the captive insurer or segregated account of a captive insurer are complete and satisfy the requirements for a certificate of authority, the Commissioner shall issue a certificate of authority to the captive insurer or segregated account within 30 days. Each certificate shall be renewed each year not later than the 30th day of April succeeding the date of its issuance. The Commissioner may impose an administrative fine or penalty on a captive insurer or segregated account that fails to renew its certificate of authority before August 1. The Commissioner may suspend or revoke the certificate of authority of a captive insurer or segregated account that fails to renew its certificate of authority on or after August 1.

(e) A captive insurer shall pay a fee to be established by the Commissioner for the issuance of a certificate of authority and an annual fee to be established by the Commissioner for the renewal of its certificate of authority. A captive insurer may be required to pay a fee for one or more segregated accounts.

(f) A captive insurer shall include its strategic business plan with its application for the issuance of its certificate of authority. If the captive insurer intends to make any material or substantive changes to its strategic business plan, the captive insurer shall file a copy of the amended strategic business plan with the Commissioner for prior written approval.

Sec. 11. Name.

A captive insurer shall not use or adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other insurer licensed in the District.

Sec. 12. Requirements for transacting business.

(a) A captive insurer shall not transact business in the District unless the captive insurer and, if applicable, each segregated account of a captive insurer, first obtains a certificate of authority from the Commissioner.

(b) In determining whether to grant the approval required in subsection (a) of this section, the Commissioner shall consider:

(1) The character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) The character, reputation, financial responsibility, experience relating to insurance, and business qualifications of the officers and directors (or equivalent managers if other than a corporation) of the captive insurer;

(3) The competence of any person who, pursuant to a contract with the captive insurer, will manage the affairs of the captive insurer;

(4) The competence, reputation, and experience of the legal counsel of the captive insurer relating to the regulation of insurance;

(5) If the captive insurer is a rental captive insurer, the competence, reputation and experience of the underwriter of the captive insurer;

(6) The strategic business plan of the insurer; and

(7) Such other aspects of the captive insurer as the Commissioner considers advisable.

(c) A captive insurer shall:

(1) Maintain an office in the District;

(2)(A) Appoint a person in the District of Columbia, consistent with the requirements of section 646(b) of the Life Insurance Act, approved March 3, 1901 (31 Stat 1209; D.C. Official Code § 31-202(b)), as the agent for service of process and to otherwise act on behalf of the captive insurer in the District.

(B) If the registered agent cannot be located with reasonable diligence for the purpose of serving notice or demand on the captive insurer, the notice or demand may be served on the Commissioner, who shall be deemed to be the agent for the captive insurer;

(3) Make adequate arrangements with a bank chartered in the District, or a branch of a bank located in the District if the bank is a member of the United States Federal Reserve System or its deposits are insured by the Federal Deposit Insurance Corporation;

(4) Employ or enter into a contract with an individual or business organization to manage the affairs of the captive insurer, which individual or business organization shall meet the standards of competence and experience satisfactory to the Commissioner;

(5) Employ or enter into a contract with a qualified, experienced, certified public accountant or a firm of certified public accountants, which accountant or firm shall meet the standards of competence and experience in matters concerning the regulation of insurance in the District, as determined by the Commissioner;

(6) Employ or enter into a contract with qualified, experienced actuaries to perform reviews and evaluations of the operations of the captive insurer; and

(7) Employ or enter into a contract with an attorney who is licensed to practice law in the District, which attorney shall meet the standards of competence and experience in matters concerning the regulation of insurance in the District, as determined by the Commissioner.

(d) The board of directors of a captive insurer shall meet at least one time each year in the District.

(e) Each a segregated account maintained by a captive insurer shall not have to comply with subsection (c) of this section unless the segregated account is organized as a separate legal entity.

(f) Notwithstanding subsection (a) of this section, a captive insurer that obtains a provisional certificate of authority may engage in limited activities as part of the initial organization and capitalization of the captive insurer.

Sec. 13. Tax on premiums collected.

(a) Except as otherwise provided in this section, a captive insurer shall pay to the District, not later than March 2 of each year, a tax at the rate of:

(1) Two hundred fifty thousandths of one percent on the first $25 million of its net direct premiums;

(2) One hundred fifty thousandths of one percent on the next $25 million of its net direct premiums; and

(3) Fifty thousandths of one percent on each additional dollar of its net direct premiums.

(b)(1) Except as otherwise provided in this section, a captive insurer shall pay to the District, not later than March 2 of each year, a tax at the rate of:

(A) Two hundred twenty-five thousandths of one percent on the first $25 million of revenue from assumed reinsurance premiums;

(B) One hundred fifty thousandths of one percent on the next $25 million of revenue from assumed reinsurance premiums; and

(C) Twenty-five thousandths of one percent on each additional dollar of revenue from assumed reinsurance premiums.

(2) The tax on reinsurance premiums pursuant to this subsection shall not be levied on premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (a) of this section. A captive insurer shall not pay any reinsurance premium tax pursuant to this subsection on revenue related to the receipt of assets by the captive insurer in exchange for the assumption of loss reserves and other liabilities of another insurer that is under common ownership and control with the captive insurer, if the transaction is part of a plan to discontinue the operation of the other insurer and the intent of the parties to the transaction is to renew or maintain such business with the captive insurer.

(c) If the sum of the taxes to be paid by a captive insurer, other than a risk retention group licensed as an association captive insurer, calculated pursuant to subsections (a) and (b) of this section is less than $7,500 in any given year, the captive insurer shall pay a minimum tax of $7,500 for the year.

(d) If the sum of the taxes to be paid by a risk retention group, licensed as an association captive insurer, calculated pursuant to subsections (a) and (b) of this section is less than $10,000 in any given year, the captive insurer shall pay a minimum tax of $10,000 for the year.

(e) The total tax paid by a captive insurer shall not exceed $100,000 in any year.

(f) In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the branch captive insurer.

(g) In the case of annuity business, the tax provided for in this section shall not apply.

(h) Notwithstanding any specific statute to the contrary and except as otherwise provided in this subsection, the tax provided for by this section shall constitute all the taxes collectible pursuant to the laws of the District from a captive insurer, and no occupation tax or other taxes shall be levied or collected from a captive insurer by the District, except for real property taxes pursuant to Chapter 8 of Title 47 of the District of Columbia Official Code or personal property taxes pursuant to subchapter II of Chapter 15 of Title 47 of the District of Columbia Official Code.

(i) A captive insurer that is issued a certificate of authority during the last quarter of the calendar year may file a written request with the Commissioner for a reduction in the minimum premium tax obligation calculated pursuant to subsections (c) and (d) of this section. The Commissioner may grant the a request pursuant to an appropriate methodology adopted by rule.

(j) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies, contracts, insurance, or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax obligation under this section.

(k) One hundred percent of the revenues collected from the tax imposed pursuant to this section shall be credited to the account for the regulation and supervision of captive insurers created by section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)).

(l) In determining the amount of premium taxes payable under this section, any insurance contract entered into by a captive insurance company issued a certificate of authority pursuant to this act, regardless of the location of the risk or the domicile of the purchaser, shall be subject to the payment of premium taxes on that transaction to the District of Columbia; provided, that upon presentation of evidence that another jurisdiction has claimed, and the company has paid, premium taxes to that jurisdiction on the same transaction, the company may credit the amount paid to the other jurisdiction against premium taxes owed to the District of Columbia.

Sec. 14. Annual report.

(a) On or before March 2 of each year, a captive insurer shall submit to the Commissioner, on a form prescribed by the Commissioner by regulation, a report of its financial condition, as prepared by a certified public accountant. A captive insurer shall file a consolidated report on behalf of each of its segregated accounts. A captive insurer shall use generally accepted accounting principles and include any useful or necessary modifications or adaptations thereof that have been approved or accepted by the Commissioner for the type of

insurance and kinds of insurers to be reported upon, as supplemented by additional information required by the Commissioner.

(b) A pure captive insurer may apply, in writing, for authorization to file its annual report based on a fiscal year that is consistent with the fiscal year of the parent company of the pure captive insurer. If an alternative date is granted:

(1) The annual report shall be due not later than 60 days after the end of each fiscal year; and

(2) The pure captive insurer shall file on or before March 2 of each year such forms as required by the Commissioner by regulation to provide sufficient detail to support its premium tax return filed pursuant to section 13.

Sec.15. Financial examination.

(a) The Commissioner, or his designee, may visit each captive insurer at such times as he or she considers necessary to thoroughly inspect and examine the affairs of the captive insurer or segregated account of a captive insurer to ascertain:

(1) The financial condition of the captive insurer;

(2) The ability of the captive insurer to fulfill its obligations; and

(3) Whether the captive insurer has complied with the provisions of this act and the regulations adopted pursuant thereto.

(b) The Commissioner may require a captive insurer to retain qualified independent legal, financial, and examination services from outside the Department to conduct the examination and make recommendations to the Commissioner. The cost of the examination shall be paid by the captive insurer.

(c) The provisions of the Law on Examinations Act of 1993, effective October 21, 1993 (D.C. Law 10-49; D.C. Official Code § 31-1401 *et seq.*), shall apply to examinations conducted pursuant to this section.

(d) For purposes of subsection (a) of this section, segregated accounts of a captive insurer shall not be separately examined unless the Commissioner has sufficient cause to examine one or more segregated accounts.

Sec. 16. Revocation, suspension, or fine.

(a) The Commissioner may revoke or suspend the certificate of authority to transact insurance business in the District of a captive insurer which:

(1) Has failed or refused to comply with any provision or requirement of this act;

(2) Is impaired in capital or surplus;

(3) Is insolvent;

(4) Is determined, pursuant to the Standards to Identify Insurance Companies Deemed to be in Hazardous Financial Condition Act of 1993, effective October 21, 1993 (D.C.

Law 10-43; D.C. Official Code § 31-2101 *et seq.*), to be in such condition that further transaction of business by the company will be hazardous to its policyholders, creditors, or the general public;

(5) Has failed or refused to submit any report or statement required by law or order of the Commissioner;

(6) Has failed or refused to comply with any provision of its charter or bylaws;

(7) Has used any method in transacting insurance business pursuant to this act which would be detrimental to the operation of the captive insurer or would make its condition unsound with respect to its policyholders or the general public; or

(8) Has failed otherwise to comply with the laws of the District or any jurisdiction.

(b) The Commissioner may also impose a fine not to exceed $5,000 for each violation by a captive insurer of any of the provisions found in subsection (a) of this section.

Sec. 17. Insolvency.

(a) A captive insurer shall not join or contribute financially to any risk-sharing plan, risk pool, or insurance insolvency guaranty fund in the District. A captive insurer or its insured, its parent or an affiliated company, or any member organization of its association shall not receive any benefit from the plan, pool, or fund for claims arising out of the operations of the captive insurer.

(b) The terms and conditions set forth in the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*), pertaining to insurer rehabilitation, insolvency, and receiverships, shall apply in full to captive insurance companies licensed under this act and shall apply to the segregated accounts of a captive insurer on an account basis. If there is a conflict between the provisions of this act and the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*), the provisions of this act shall prevail.

Sec. 18. Redomestication.

(a) Any captive insurer which is licensed under laws of any jurisdiction may become a domestic captive insurer in the District by complying with all of the requirements of this act relative to the organization and licensing of a domestic insurer of the same type and by designating an office at a place within the District. The redomesticated captive insurer may transact business in the District and shall be subject to the authority and jurisdiction of the District.

(b) All insurance contracts which are in existence at the time any captive insurer transfers its insurance domicile to the District by merger, consolidation, or any other lawful method shall continue in full force and effect upon the transfer if the captive insurer is duly qualified to transact the same type of insurance business in the District.

(c) Every transferring insurer shall notify the Commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to application documents filed or required to be filed with the Commissioner.

(d) Any domestic captive insurer, upon the approval of the Commissioner, may transfer its domicile to any state in which it is licensed to transact business as a captive insurance company and, upon the transfer, shall cease to be a domestic insurer. The Commissioner shall approve any proposed transfer unless he or she determines the transfer is not in the best interest of the policyholders.

Sec. 19. Rating organization.

A captive insurer shall not required to join a rating organization.

Sec. 20. Captive insurance regulatory and supervision trust account.

All fees, fines, penalties, and assessments received by the Commissioner under this act shall be deposited in, and credited to, the account established by section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)), and expended in accordance with section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)).

Sec. 21. Judicial review; mandamus.

(a) Any captive insurer aggrieved by any act, determination, rule, regulation, order, or any other action taken by Commissioner pursuant to this act, and which was the subject of a contested case, may appeal to the District of Columbia Court of Appeals, in accordance with section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

(b) The filing of an appeal pursuant to this section shall not stay the application of any rule, regulation, order, or other action of the Commissioner to the appealing party unless the court, after giving the appealing party notice and an opportunity to be heard, determines that failure to grant the stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(c) Any captive insurer aggrieved by any failure of the Commissioner to act or make a determination required by this act may petition the Superior Court of the District of Columbia for a writ in the nature of a mandamus or a peremptory mandamus directing the Commissioner to act or make such determination forthwith.

Sec. 22. Regulations.

The Commissioner may issue rules and regulations relating to captive insurers as are necessary to enable him or her to carry out the provisions of this act.

Sec. 23. Applicable laws.

Except as provided in this act, no law relating to the insurance industry shall apply to captive insurers other than this act.

Sec. 24. Repeal and transition provisions. Note, § 31-3901

(a) The Captive Insurance Company Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), is repealed, subject to the provisions of this section.

(b) All existing fees set forth in the Captive Insurance Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), shall remain in effect under the corresponding provisions of the Captive Insurance Company Act of 2004, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), and shall be applicable to segregated accounts, unless modified or repealed by rules promulgated by the Commissioner.

(c) All effective certificates of authority and all conditions imposed on the certificates of authority shall apply to the extent they would have applied under prior law.

(d) All captive insurers granted a certificate of authority as sponsored captive insurers under prior law shall comply with all of the provisions found in this act.

Sec. 25. Section 3 of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1202), is amended by adding a new subsection (b-3) to read as follows: Note, § 31-1202

"(b-3)(1) There is established a separate account within the Insurance Regulatory Trust Fund for the purpose of funding the expenses of the Department of Insurance, Securities, and Banking in the discharge of all of its administrative, regulatory and marketing functions under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834). Except as otherwise provided in section 13(g), all fees, fines, penalties, assessments, and other funds received by the Commissioner under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), and regulations promulgated thereunder, shall be deposited in, and credited to, the account. The Mayor shall be responsible for the deposit and expenditure of these monies as provided by law. At the end of each fiscal year, any funds in the account shall revert to the General Fund of the District of Columbia.

"(2) Captive insurance companies conducting business in the District under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), shall be exempt from the assessments imposed on insurers and health maintenance organizations under section 4.".

Sec. 26. Section 3(a)(1) of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4102(a)(1)), is amended to read as follows: Note, § 31-4102

"(a)(1) A risk retention group shall be chartered as an association captive insurer licensed pursuant to section 2 of the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), and licensed to write only liability insurance pursuant to this act, and shall comply with all of the laws, rules, and regulations, and requirements applicable to captive insurance companies chartered and licensed in the District and with section 4, to the extent the requirements are not a limitation on laws, rules, regulations, or requirements of the District.".

Sec. 27. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 28. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 30, 2004

ENROLLED ORIGINAL

AN ACT

D.C. ACT 15-641

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 30, 2004

Codification District of Columbia Official Code

2001 Edition

2005 Winter Supp.

West Group Publisher

To comply with the congressional requirements in the District of Columbia Financial Responsibility and Management Assistance Act of 1995 regarding the use of the reserve funds.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Emancipation Day Reserve Fund Allocation Emergency Act of 2004".

Note, § 47-392.02

Sec. 2. Pursuant to section 202(j)(3)(B) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, effective April 17, 1995 (109 Stat. 109; D.C. Official Code § 47-392.02(j)(3)(B)), the District hereby provides an amount not to exceed $1.1 million from the funds that remain available from the District of Columbia Fiscal Year 2001 budgeted reserve funds shall be made available to fund calendar year 2005 activities associated with the legal holiday established pursuant to the District of Columbia Emancipation Day Amendment Act of 2000, effective April 3, 2003 (D.C. Law 13-237; 48 DCR 597).

Sec. 3. The use of the Reserve funds is already incorporated into the District's budget and financial plan and, therefore, the enactment of this legislation has no fiscal impact.

Sec. 4. Effective date.

This act shall take effect upon its approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
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